

In the Matter of:)
)
Application for)
Certification of the) Docket No. 99-AFC-2
THREE MOUNTAIN POWER PROJECT)
(OGDEN ENERGY, INC.))
_____)

MONDAY, DECEMBER 18, 2000

9:13 A.M.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

William J. Keese, Chairman, Presiding Member

STAFF PRESENT

Edwin Bouillon, Jr., Hearing Officer

Cynthia Praul, Advisor to Chairman Keese

Dick Ratliff, Staff Counsel

Caryn Holmes, Staff Counsel

Richard Buell, Project Manager

Pat Owen, Project Secretary

Linda Spiegel

Tuan Ngo

Gary Walker

Steve Baker

David Flores

PUBLIC ADVISER

Roberta Mendonca

REPRESENTING THE APPLICANT

Martin J. McFadden, Jr., Vice President
Ogden/Three Mountain Power

Michael H. Zischke, Attorney
Morrison & Foerster

Scott M Turner, Attorney
Nixon Peabody

Ann T. MacLeod, Attorney
White and Case

Les Toth, P.E., Project Manager

REPRESENTING THE APPLICANT

Danielle Tinman, Director of Community Relations
Ogden/Three Mountain Power

N. Thomas Sheahan, Vice President
W. Greg Hamer, Senior Hydrologist
URS Corporation

Jeffrey Fuller

Marsha Gale
Environmental Vision

Ken Richmond
MFG, Inc.

Mai M. Hattar, P.E., Senior Project Manager
Bibb and Associates

Valorie L. Thompson, Ph.D., Principal
Scientific Resources Associated

INTERVENORS PRESENT

Marci Crockett
Jim Crockett
Abe Hathaway
Bob Murray
Burney Resource Group

Greg Gilbert
Goal Line Technologies

Bob Davis, Parks and Recreation Department
State of California

ALSO PRESENT

Peter Epanchin Fish and Wildlife Biologist
Endangered Species Division
U.S. Fish and Wildlife Service

Rita Cirulis
Michael Kussow
County of Shasta
Department of Resource Management
Air Quality Management District

ALSO PRESENT

Jim Buntin, Vice President
Brown, Buntin Associates, Inc.

Timothy Rose, Ph.D.
Lawrence Livermore National Laboratory

Linda Bond, Hydrogeologist

Richard Sapudar, Environmental Specialist
California Department of Water Resources

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

I N D E X

	Page
Proceedings	1
Introductions	1
Opening Remarks	1
Presiding Member Keese	1
Hearing Officer Bouillon	6
Topics	14
Land Use and Alternatives	14
CEC Staff witness G. Walker	16
Direct Examination by Mr. Ratliff	16
Cross-Examination by Ms. Crockett	18
Cross-Examination by Mr. Zischke	26
Exhibits	27/33
Alternatives	31
Cross-Examination by Ms. Crockett	31
Noise	33
Applicant witness J. Fuller	33
Direct Examination by Mr. Zischke	33
Exhibits	35
Topics of stipulated testimonies	36
Project Description	36
Waste Management	36
Power Plant Reliability	36
Power Plant Efficiency	36
Exhibits	37/39
Noise - resumed	40
Applicant witness J. Fuller - resumed	40
Cross-Examination by Mr. Murray	40
Redirect Examination by Mr. Zischke	52
Recross-Examination by Mr. Murray	54
Exhibits	56/122

I N D E X

	Page
Topics	
Noise - continued	
CEC Staff witnesses S. Baker and J. Buntin	57
Direct Examination by Mr. Ratliff	57
Exhibits	58,90/91
Cross-Examination by Mr. Murray	60
Redirect Examination by Mr. Ratliff	88
Intervenor BRG witness B. Murray	92
Direct Examination by Ms. Crockett	92
Examination by Committee	97
Cross-Examination by Mr. Zischke	98
Cross-Examination by Mr. Ratliff	99
Redirect Examination by Ms. Crockett	101
Recross-Examination by Mr. Zischke	103
Recross-Examination by Mr. Ratliff	104
Exhibits	105/111
Visual Resources	112
Applicant witnesses M. Gale, K. Richmond	113
Direct Examination by Mr. Zischke	114
Exhibits	114/118
Cross-Examination by Ms. Crockett	116
CEC Staff witness D. Flores	119
Direct Examination by Mr. Ratliff	119
Exhibits	119/121
Cross-Examination by Ms. Crockett	120
Redirect Examination by Mr. Ratliff	121
Afternoon Session	124
Topics	
Air Quality and Public Health	124
Applicant witnesses M. McFadden, V. Thompson, M. Hattar	124
Direct Examination by Mr. Zischke	125
Exhibits	126,129/148
Cross-Examination by Ms. Crockett	131
Exhibit	135/150
Redirect Examination by Mr. Zischke	146

I N D E X

Topics	Page
Air Quality and Public Health - continued	
CEC Staff witnesses T. Ngo, M. Kussow	150
Direct Examination by Mr. Ratliff	150
Exhibits	150,161
Cross-Examination by Mr. Zischke	163
Cross-Examination by Ms. Crockett	167
Exhibits	174
Examination by the Committee	219
Recross-Examination by Mr. Zischke	228
Redirect Examination by Mr. Ratliff	232
Recross-Examianation by Ms. Crockett	234
Exhibits	235
Intervenor BRG witness G. Gilbert	241
Direct Examination by Ms. Crockett	241
Exhibits	241
Cross-Examination by Mr. Zischke	242
Cross-Examination by Mr. Ratliff	248
Examination by the Committee	263
Redirect Examination by Ms. Crockett	267
Recross-Examination by Mr. Zischke	274
Exhibit	276/276
Exhibits	283
Soil and Water Resources	286
CEC Staff witnesses T. Rose, L. Bond, R. Sapudar	286
Direct Examination by Ms. Holmes	290
Exhibits	286, 289, 290, 292,308/315
Cross-Examination by Ms. Crockett	309
Adjournment	318
Reporter's Certificate	319

1 P R O C E E D I N G S

2 9:00 a.m.

3 PRESIDING MEMBER KEESE: Good morning.

4 We're starting these hearings on the Three
5 Mountain Project; 99-AFC-2 is our docket number.
6 I'm Bill Keese, Presiding Member over this
7 Committee. Bob Laurie, the Second Member, will
8 not be able to join us today. We're hoping
9 Cynthia Praul, my Advisor, will join us sometime.

10 Mr. Ed Bouillon is to my right, and Ed
11 will be conducting most of the hearing today.

12 I'd like to make a couple introductory
13 remarks. We've set two days for these hearings.
14 We're hopeful that we can conclude them in that
15 time.

16 For anyone who is new to this process,
17 we are taping and transcribing this hearing. So
18 we will ask that you speak to a mike that is being
19 recorded, and hopefully, for this room, amplified,
20 also. If you have an unusual last name we'd ask
21 that you spell it for our court reporter.

22 Your written testimony has been filed
23 with us, so nothing today really has to
24 reintroduce the written testimony. We've got the
25 details.

1 I'm now going to turn it over to the
2 applicant and the staff and the intervenors to
3 introduce themselves. And we will start with the
4 applicant, Mr. McFadden.

5 MR. McFADDEN: My name is Marty
6 McFadden. I'm the Vice President of Three
7 Mountain Power, and I'm in charge of the
8 development.

9 Next to me is Mr. Scott Turner of Nixon
10 Peabody, one of our counsel. Next to him is Mike
11 Zischke of Morrison and Foerster, one of our
12 counsel.

13 In the audience and sometimes at this
14 table will be Mr. Les Toth, who is our Project
15 Manager. Ms. Ann MacLeod of White and Case,
16 counsel for Three Mountain Power. And I'd also
17 like to introduce Danielle Tinman, who is our
18 Director Community Relations.

19 PRESIDING MEMBER KEESE: Thank you. Mr.
20 Buell.

21 MR. BUELL: Yes. My name is Richard
22 Buell, I'm the Project Manager for the Energy
23 Commission Staff. And to my right is Dick
24 Ratliff, one of our Staff Counsels. And in the
25 audience is Ms. Caryn Holmes who is the other

1 Staff Counsel on this case.

2 We also have present with us today Pat
3 Owen, who is our Project Secretary. Help you find
4 copies or make copies for you of any materials.

5 PRESIDING MEMBER KEESE: Thank you.

6 Marci Crockett for Burney Resource Group.

7 MS. CROCKETT: Yes, thank you. I'm
8 Marci Crockett, spokesperson for the Burney
9 Resource Group, representing about 40 to 45
10 community members. At my left is my husband, Jim
11 Crockett.

12 I would like to introduce in the
13 audience Mr. Bob Murray, one of the members of
14 BRG, and Mr. Abe Hathaway, who is also a member of
15 BRG, as well as an intervenor, and will be
16 participating today. Thank you.

17 PRESIDING MEMBER KEESE: Thank you. Do
18 we have Mr. Claude Evans here? No. Is Black
19 Ranch represented?

20 HEARING OFFICER BOUILLON: I understand
21 that Mr. Evans had some surgery recently and is
22 recovering. I hope he's doing all right.

23 MS. CROCKETT: He has had a heart attack
24 and is recovering from the surgery to take care of
25 that.

1 PRESIDING MEMBER KEESE: Mr. Hathaway,
2 you are an intervenor here. Are you going to
3 participate as an intervenor?

4 MR. HATHAWAY: I'm with the Burney
5 Resource Group today --

6 PRESIDING MEMBER KEESE: So you're going
7 to join with the Burney Group?

8 MR. HATHAWAY: Yes.

9 PRESIDING MEMBER KEESE: That's fine.
10 Do we have a representative of Parks and
11 Recreation?

12 We'd like you to use a microphone,
13 please.

14 MR. DAVIS: Bob Davis with State Parks.

15 PRESIDING MEMBER KEESE: Are you going
16 to be cross-examining today?

17 MR. DAVIS: No, sir, I'm just here as an
18 observer.

19 PRESIDING MEMBER KEESE: Thank you. Do
20 we have any other intervenor present?

21 Thank you.

22 Do we have any other governmental
23 agencies who would like to identify themselves at
24 the present time? At one of the microphones,
25 please.

1 MR. KUSSOW: My name is Michael Kussow;
2 I'm the Air Pollution Control Officer for Shasta
3 County. And I also have Rita Cirulis from our
4 office, Senior Air Pollution Inspector.

5 PRESIDING MEMBER KEESE: Thank you. Any
6 other? Seeing none.

7 Our Public Adviser, Roberta Mendonca, is
8 here.

9 MS. MENDONCA: That's all that needs to
10 be said, is that the Public Adviser is here today.
11 Thank you.

12 PRESIDING MEMBER KEESE: Okay, so
13 anybody has any questions, ask Roberta.

14 We're going to conduct this hearing in
15 as open a manner as possible, as those of you who
16 have participated in, we've kept it reasonably
17 informal to this date. We're at the more informal
18 stage of our process, but we will still try to
19 accommodate all.

20 Primary to all of this is to make sure
21 that we stay on the schedule in as clear and
22 consistent a manner as we can. So, we're going to
23 be trying to understand what happens to the
24 schedule, where the information gaps are, and
25 what's still to be found.

1 We're going to try to get some clarity
2 about some of the issues that have been up in the
3 air through the current time.

4 Keep in mind that this is not a round-
5 robin of testimony and reiteration and further
6 reiteration. We expect you to get to your points,
7 get them on the table. We'll debate them, and we
8 will either make a decision here or take them
9 under submission.

10 Mr. Bouillon, would you start the
11 proceeding.

12 HEARING OFFICER BOUILLON: Thank you.
13 Mr. Chairman, I'd like to take care of a few
14 housekeeping matters first.

15 This public hearing was noticed on
16 December 5th of this year, and everybody on the
17 service list should have received a copy. That
18 notice of hearing did not contain an order in
19 which we're going to be proceeding today and
20 tomorrow. That order was established after I
21 received the prehearing statements from each of
22 the participants and was set forth as an email
23 attachment to all of the parties, and I believe
24 for the entire proof of service list.

25 I don't know if everybody has an order,

1 but I will read the order of the topics that I
2 sent out. Mr. McFadden.

3 MR. McFADDEN: Excuse me, I don't
4 believe that your microphone into the room is on.

5 HEARING OFFICER BOUILLON: I think
6 you're right. Thank you.

7 The order in which we're going to be
8 proceeding, as the notice was sent out, is land
9 use, noise, public health, visual resources, waste
10 management, alternatives, air quality, water
11 resources, biological resources.

12 And then four topics to which there will
13 be, to my understanding, will be no cross-
14 examination, project description, efficiency,
15 reliability and waste management. Those latter
16 four topics are going to be, all the testimony
17 will be admitted by way of stipulation is my
18 understanding. And we will fit that in as time
19 allows.

20 There's also been some slight changes to
21 that schedule at the request of the parties. Mr.
22 Rose and the witnesses on water for the staff, we
23 will try to accommodate at 3:00 p.m. this
24 afternoon to accommodate their schedules.

25 And in addition, the topics of -- I'll

1 ask Mr. Buell to help me out -- he requested for
2 one of his witnesses there were two topics, that
3 we will combine those and one after the other.

4 MR. BUELL: In two cases we had
5 requested that we consider two topics
6 simultaneously. The first is land use and
7 alternatives, since we have the same witness on
8 that, so that alternatives would be the second
9 topic discussed.

10 And we also suggested that we take up
11 public health at the same time that we take up air
12 quality.

13 HEARING OFFICER BOUILLON: Yes, that's
14 correct.

15 MS. CROCKETT: Mr. Bouillon, may I ask a
16 question on that?

17 HEARING OFFICER BOUILLON: Excuse me.

18 MS. CROCKETT: We had a witness for air
19 quality scheduled at 1:00, and due to traveling
20 from Sacramento, would it be inconvenient for
21 staff if we did public health at that time?

22 HEARING OFFICER BOUILLON: We could do
23 that. We'll do it the way you just suggested.

24 MS. CROCKETT: Okay, thank you.

25 HEARING OFFICER BOUILLON: I don't know

1 that we'll get to either of them by 1:00, but
2 we'll see what we can do. We're going to be as
3 flexible as we can to try to accommodate everyone.

4 MS. CROCKETT: And I need to reassure
5 everyone our witness is not under any time
6 constraints. Other than arrival.

7 HEARING OFFICER BOUILLON: Some
8 additional accommodations we're going to make is
9 that Maria Ellis and Jeff Cook, who are witnesses
10 for the intervenor Burney Resource Group, have
11 requested that they be allowed to testify either
12 this morning early, or tomorrow morning early to
13 accommodate the needs of their new child and their
14 new parenting problems, which I can greatly
15 appreciate.

16 Therefore, we will take their testimony
17 first thing tomorrow morning. In reviewing their
18 testimony it appears that Maria Ellis' testimony
19 is on the topic of biological resources, and the
20 testimony of Jeff Cook is entitled, hydrological
21 resources, which I would put in the area of soil
22 and water resources. But we will take at least
23 his testimony out of order to allow him to testify
24 directly after Maria Ellis. They will not testify
25 as a panel, but separately, one after the other,

1 even though their topics are different.

2 I want to say one thing about the direct
3 testimony that you've all filed. It is extensive
4 in nature and it's all in great detail. It does
5 not have to be iterated here. I added up the time
6 that you people required for a brief summary of
7 your testimony and it comes out to six hours.
8 That's not going to happen.

9 You're going to introduce your
10 witnesses; you're going to -- I don't need
11 anything about the qualifications, for instance.
12 They either are or are not an expert, and I don't
13 think they've gained any additional experience
14 since you've filed their testimony.

15 If there -- there are some certain
16 topics, one of which is the Hat Creek project.
17 And so when your witnesses who have analyzed the
18 Hat Creek project are on the stand, if they have
19 considered the cumulative or other impact of the
20 Hat Creek project, you can make note of that in
21 your direct testimony, very briefly.

22 The Burney Resource Group has raised
23 that project as an impediment to completing these
24 hearings, and that's going to have to be discussed
25 here. But they can develop what they need for

1 that through their cross-examination mostly.

2 What I would want on direct is that,
3 yes, I considered it, and yes or no, it makes no
4 difference in my analysis. If they answer yes, it
5 does make a difference in my analysis, the
6 difference is. All of that should take just a
7 very few minutes on direct. And then whatever
8 time is necessary on cross for that part of cross-
9 examination.

10 MR. ZISCHKE: Mr. Bouillon, a couple of
11 questions when you indicated you don't want. Do
12 you just want us to submit on the qualifications
13 rather than asking for a brief summary --

14 HEARING OFFICER BOUILLON: Absolutely.

15 MR. ZISCHKE: -- of those
16 qualifications? And it's my understanding that
17 when there is more than one witness they will
18 appear as a panel, is that correct?

19 HEARING OFFICER BOUILLON: In all cases
20 in which you can do that.

21 MR. ZISCHKE: I was not clear from Ms.
22 Crockett's comments, they had three witnesses on
23 air. Is there one witness coming, or are all
24 three coming?

25 HEARING OFFICER BOUILLON: It's my

1 understanding only one witness is going to be
2 here, and hopefully he can answer all of the
3 questions.

4 MR. ZISCHKE: And that is?

5 MS. CROCKETT: Mr. Greg Gilbert.

6 MR. ZISCHKE: Thank you.

7 MS. CROCKETT: We do have the phone
8 numbers of the other two on the panel if Mr.
9 Bouillon feels it's necessary to contact them.

10 HEARING OFFICER BOUILLON: The Burney
11 Resource Group has filed what the Committee must
12 consider a motion for a continuance of the
13 hearings based upon the effect of the Hat Creek
14 project. That motion is being taken under
15 submission. It will not be decided until the
16 conclusion of these hearings today and tomorrow.
17 And it may not be decided then.

18 We will attempt to elicit the facts
19 surrounding that motion. If we can decide the
20 issue based upon the evidence we hear, we will do
21 so. If there needs to be additional study and/or
22 additional hearings they will have to be
23 scheduled. But we won't know that until at least
24 tomorrow afternoon.

25 Particularly with regard to the Hat

1 Creek project, but also with regard to any topic,
2 after cross-examination each of the parties would
3 be allowed time for redirect examination if
4 needed.

5 The Committee has received a stipulation
6 from the staff and the applicant with regard to
7 certain topics. It was docketed on December 13th,
8 and it basically has to do with water flow and
9 water resources. That stipulation will be
10 accepted by the Committee with respect to the
11 testimonies of the staff and the applicant. It
12 will have no effect whatsoever, of course, on the
13 Burney Resource Group, who are not a party to that
14 stipulation.

15 First let me ask you, Ms. Crockett, did
16 you receive a copy of that?

17 MS. CROCKETT: Yes, I did.

18 HEARING OFFICER BOUILLON: I'd also like
19 to call your attention to an exhibit list that
20 we've been preparing. At the last hearings we
21 went through exhibit number 63, at least by my
22 records we did, and it's my records that count.
23 So the next exhibit that will be marked we will
24 start with number 64.

25 I want to say one thing about the

1 various groups that are here. Each of you have
2 several representatives, some lawyers, some not.
3 For any witness or panel of witnesses, whether we
4 have one witness up here or three witnesses up
5 here, during cross-examination any designated
6 member of each party may cross-examine that
7 witness or group of witnesses.

8 For instance, Mr. Zischke, on behalf of
9 the applicant, can cross-examine the Burney
10 Resource witness on air. Ms. MacLeod would not be
11 allowed to cross-examine that same witness. Ms.
12 MacLeod being the other attorney for the
13 applicant. Nor would Mr. McFadden, who is a non-
14 lawyer.

15 If you take the applicant's witnesses on
16 water, either Ms. or Mr. Crockett could cross-
17 examine, or some other member of the Burney
18 Resource Group, but not both. And the same for
19 the staff.

20 I believe we are ready to begin. I have
21 mentioned that public health and air resources
22 will be put together. And we will handle the
23 first two topics of land use and alternatives at
24 this time.

25 Does the applicant have any --

1 MR. ZISCHKE: We do not have any
2 witnesses. We had agreed by email, and no one had
3 requested cross-examination of our witnesses on
4 either topic.

5 HEARING OFFICER BOUILLON: It's my
6 understanding the applicant has no witnesses
7 present on either of those topics, is that
8 correct?

9 MR. ZISCHKE: That's correct, there was
10 stipulated testimony at the prior hearing on land
11 use, but there's no part two testimony on land
12 use.

13 HEARING OFFICER BOUILLON: And we have
14 Mr. Walker for the staff.

15 MR. RATLIFF: I think Mr. Walker may
16 have been sworn in the prior hearings. Have you
17 been sworn --

18 MR. WALKER: Yes, I was.

19 MR. RATLIFF: Do you want to have him
20 sworn again? I think he was sworn in the prior
21 hearings, does he need to be sworn again?

22 HEARING OFFICER BOUILLON: All right.
23 Whereupon,

24 GARY WALKER
25 was recalled as a witness herein and having been

1 previously duly sworn, was examined and testified
2 further as follows:

3 DIRECT EXAMINATION

4 BY MR. RATLIFF:

5 Q Mr. Walker, did you prepare the staff
6 testimony on land use and alternatives in the FSA,
7 final staff assessment part one?

8 A The alternatives weren't in part one,
9 but I did prepare both of those testimonies.

10 Q You did not have any testimony in part
11 one for alternatives, is that correct?

12 A Right.

13 Q But for land use you did?

14 A Yes.

15 Q And you prepared the testimony that
16 appears in, is it part three of the staff
17 testimony?

18 A Yes, for alternatives.

19 Q And the supplemental testimony in land
20 use, is that correct?

21 A That's correct.

22 Q That's in part two of your testimony.
23 Is that testimony true and correct to the best of
24 your knowledge and belief?

25 A Yes.

1 Q Do you have any changes to make in that
2 testimony today?

3 A No.

4 Q With regard to the Hat Creek project,
5 have you reviewed environmental documentation
6 pertaining to that project?

7 A Yes.

8 Q Does that change any of the conclusions
9 in your testimony on alternatives or land use that
10 you're testifying to today?

11 A No.

12 Q Could you --

13 MR. RATLIFF: The witness is available
14 for cross-examination. You don't want summaries
15 of his testimony, as I understand, is that
16 correct, Mr. Bouillon?

17 HEARING OFFICER BOUILLON: I'm sorry?

18 MR. RATLIFF: You don't want any further
19 summaries of his testimony?

20 HEARING OFFICER BOUILLON: That's
21 correct.

22 MR. RATLIFF: So the witness is
23 available for cross-examination then.

24 HEARING OFFICER BOUILLON: Does
25 applicant have any questions?

1 MR. ZISCHKE: We have no questions
2 unless something new comes up in additional
3 questioning.

4 HEARING OFFICER BOUILLON: Ms. Crockett.

5 MS. CROCKETT: Thank you.

6 CROSS-EXAMINATION

7 BY MS. CROCKETT:

8 Q Mr. Walker, let's start with the Hat
9 Creek project, did you review their EIR that was
10 submitted, the final draft?

11 A Yes.

12 Q Did you review all of the data that was
13 included in the comments?

14 A Yes.

15 Q Are you aware that the EIR is under
16 question by opponents of the project at this time,
17 and currently has been appealed?

18 A No.

19 Q There was some question in the EIR that
20 the EIR actually comments, from commenters
21 included in the EIR, that there might be a
22 deficiency in the EIR in representing the project.
23 Did you take note of that in your review of the
24 EIR?

25 A Yes. Generally, yes.

1 Q If, in fact, there are deficiencies in
2 the description of the project would that alter
3 your evaluation of whether there were impacts or
4 not concerning land use?

5 A Concerning land use I do not think so
6 because in terms of cumulative impacts the project
7 is so far away from the Three Mountain project
8 that I don't anticipate any cumulative land use
9 impacts.

10 Q Could you clarify for me what you mean
11 by cumulative land use impacts?

12 A Well, the impacts from the proposed
13 project and other planned or present projects on
14 land use in the vicinity.

15 Q I'm still not quite clear. So, --

16 A Well, whether, together, they would, for
17 instance, preclude a substantial amount of land
18 from other uses, that's one --

19 Q Okay, that's much clearer, thank you.
20 Now I'll move along.

21 Would you explain specifically what
22 compatible with surrounding land use is? I mean
23 we're trying to get at that with the Hat Creek
24 project, but now let's get over to the Three
25 Mountain project, and the land that surrounds it.

1 You stated, or it was stated in the AFC,
2 going back quite a ways, that under Shasta
3 County's general plan that a new project must be
4 compatible with the surrounding land uses. And
5 you did, indeed, do that evaluation?

6 A Yes.

7 Q And did you specifically state that it
8 was compatible?

9 A Yes.

10 Q Okay, you also stated that there are no
11 sensitive land uses within a one-mile radius of
12 the site in lay-down area, is that correct?

13 A Yes.

14 Q What is defined as a sensitive land use?

15 A In the context it would be uses such as
16 residences, recreational areas.

17 MR. ZISCHKE: If we could interject, are
18 these questions based on the application for
19 certification? That's a Three Mountain Power
20 document, not a staff-prepared document.

21 HEARING OFFICER BOUILLON: It's my
22 understanding these questions were based upon the
23 applicant's direct testimony.

24 MR. ZISCHKE: I believe her question
25 referred to the AFC, and if she's asking questions

1 to the staff about the application for
2 certification, we prepared that. Staff did not
3 prepare that, so we'd object to questioning staff
4 on the application for certification.

5 HEARING OFFICER BOUILLON: I understand
6 that, but it's also my understanding that Mr.
7 Walker analyzed the AFC and made a determination
8 based upon his examination of the AFC that the
9 land uses were compatible. And I'm going to allow
10 her to ask questions about that analysis.

11 MS. CROCKETT: Thank you. Do I need to
12 restate my question? I think we --

13 HEARING OFFICER BOUILLON: Yes, please.

14 MS. CROCKETT: Okay.

15 BY MS. CROCKETT:

16 Q What is defined as a sensitive land use?

17 A In this context it would be uses such as
18 residential and recreational uses, where people
19 would be affected, or sensitive receptors such as
20 people, would be affected. That type of use.

21 Q Okay. Thank you. Why is a one-mile
22 radius used for evaluation for determining land
23 use compatibility?

24 A The types of impacts that can affect
25 compatibility such as noise, dust, air quality --

1 not air quality, excuse me -- visual quality, that
2 could affect the people using those areas for
3 residential and recreational use typically would
4 occur within a mile.

5 Q You did state air quality as well,
6 correct?

7 A No, I didn't. I misspoke.

8 Q That was a correction?

9 A Yeah.

10 Q Okay. Visibility, noise, dust.

11 A And visual, yeah the impacts.

12 Q Okay. Since the Three Mountain Power
13 project is a 500 megawatt power plant, are there
14 any specific requirements for a project of that
15 size that must be met for compatibility within
16 this one-mile radius?

17 A Nothing that's specific for that
18 particular size. The requirements aren't based on
19 the size of the project, they're based upon the
20 nature of the project, not on how many megawatts
21 it produces.

22 Q The reason I'm stipulating the size is
23 that the CEC is not involved in anything over 50
24 megawatts, is that correct?

25 A Under 50. We're not involved --

1 Q Under, under.

2 A -- in anything under 50 megawatts.

3 Q And therefore it would be anything over
4 50 that would be scrutinized?

5 A Yes.

6 Q Okay. When you were reviewing the
7 applicant's testimony in the AFC, it was stated
8 generally that the current site is zoned generally
9 for general industrial use, associated linear
10 facilities with pass-through parcels that are
11 zoned for timberland, public facility use, and
12 general or light industrial use.

13 Is that referring specifically to the
14 right-of-way along the railroad leaving the Three
15 Mountain project, or does that include the power
16 lines that will march across to the west and
17 across the foothills?

18 HEARING OFFICER BOUILLON: Excuse me,
19 Mr. Walker. Now, if I understood you correctly
20 you were quoting some language from the AFC and
21 asking him what that applied to?

22 MS. CROCKETT: His evaluation.

23 HEARING OFFICER BOUILLON: I don't think
24 that's what you asked him. And, I understand Mr.
25 Zischke wouldn't object twice, after he loses

1 once, but --

2 MS. CROCKETT: Okay.

3 HEARING OFFICER BOUILLON: -- that was,
4 I don't think you can ask him what the AFC
5 referred to. You can ask him if he analyzed the
6 facts surrounding that statement.

7 MS. CROCKETT: Thank you.

8 HEARING OFFICER BOUILLON: Okay?

9 MS. CROCKETT: May I read what --

10 HEARING OFFICER BOUILLON: Not
11 necessarily exactly that way. You can ask him
12 about facts that are in his testimony, statements
13 that are in his testimony. You cannot ask him
14 about statements in the AFC.

15 MS. CROCKETT: Okay.

16 MR. ZISCHKE: And, Mr. Hearing Officer,
17 if I could request one clarification. The scope,
18 since for witnesses who have testified before, is
19 their supplemental testimony, as well as the Hat
20 Creek issue that's been raised, but we're not
21 revisiting all of their prior testimony that's
22 already been heard, is that correct?

23 HEARING OFFICER BOUILLON: That is
24 correct. We've been through many of these topics
25 before, and they've had to be revisited by virtue

1 of the supplemental testimony having to do with
2 the new water use plan. And that new plan's
3 effect upon topics that were previously closed.

4 But that didn't mean we went back to
5 square one --

6 MS. CROCKETT: Okay.

7 HEARING OFFICER BOUILLON: -- on, for
8 instance, such items as land use, which we did
9 cover earlier.

10 MS. CROCKETT: Thank you. In
11 clarification I need to ask a question going back
12 to the previous hearings on land use. We
13 clarified that anything to do with land use and
14 air quality would be covered in this segment, is
15 that correct?

16 HEARING OFFICER BOUILLON: The topics
17 of -- say that again.

18 MS. CROCKETT: I had tried to bring up
19 some questions and my memory is not really clear
20 on this, but I think I remember correctly that
21 land use topics associated with air quality would
22 be covered in the phase two hearings.

23 That any questions we have concerning
24 land use and air quality, or air quality impacts,
25 would be deferred until the second phase of

1 hearings. Do I remember that correctly?

2 HEARING OFFICER BOUILLON: Testimony
3 about air quality insofar as it impacts land use
4 would be handled in this round of hearings.

5 MS. CROCKETT: On air quality.

6 HEARING OFFICER BOUILLON: But not
7 through the land use witness.

8 MS. CROCKETT: Then I will defer those
9 questions to air quality. Okay, thank you very
10 much, Mr. Walker. I'm finished with this witness.

11 HEARING OFFICER BOUILLON: Okay. Mr.
12 Ratliff, do you have any redirect?

13 MR. RATLIFF: No.

14 HEARING OFFICER BOUILLON: May the
15 witness be excused?

16 MR. ZISCHKE: We have one short question
17 if we may ask the witness, responding to the
18 Burney Resource Group's questions.

19 HEARING OFFICER BOUILLON: Certainly.

20 CROSS-EXAMINATION

21 BY MR. ZISCHKE:

22 Q Mr. Walker, in your analysis of the
23 cumulative impacts, what you are evaluating under
24 the California Environmental Quality Act and the
25 environmental review process is whether or not

1 there's any significant cumulative impact, is that
2 correct?

3 A That's correct.

4 Q And is it your conclusion, as a result
5 of the review of the Hat Creek EIR that there's no
6 new significant impact of this project as a result
7 of the possible approval of that project?

8 A That's correct.

9 MR. ZISCHKE: Thank you.

10 HEARING OFFICER BOUILLON: Ms. Crockett,
11 does that suggest any additional cross-examination
12 to you?

13 MS. CROCKETT: Not under land use, thank
14 you.

15 HEARING OFFICER BOUILLON: All right.
16 You're excused, Mr. Walker.

17 MR. WALKER: Do we need to deal with
18 alternatives now, also? Or did we just do that?

19 HEARING OFFICER BOUILLON: Oh, yes, I
20 think we need to mark and identify and get into
21 evidence his exhibits.

22 MR. RATLIFF: Yes. We have two
23 exhibits.

24 HEARING OFFICER BOUILLON: All right.

25 MR. RATLIFF: The first is the final

1 staff assessment part two.

2 HEARING OFFICER BOUILLON: We have an
3 FSA part two, final staff assessment.

4 MR. RATLIFF: Yes.

5 HEARING OFFICER BOUILLON: We can mark
6 that as one document, and we can admit his part of
7 it at this time.

8 MR. RATLIFF: Okay.

9 HEARING OFFICER BOUILLON: Does anybody
10 have any objection to that?

11 MR. ZISCHKE: No, we don't.

12 HEARING OFFICER BOUILLON: Do you
13 understand?

14 MS. CROCKETT: I'm sorry, I was getting
15 my alternative --

16 HEARING OFFICER BOUILLON: Okay. The
17 staff has prepared a final staff assessment part
18 two. We are making that as exhibit number 64.
19 And that is the entire document, part two of the
20 final FSA.

21 We are going to, at this time, admit
22 that portion of part two FSA containing the
23 testimony of Mr. Walker. Is there any objection
24 to that?

25 MS. CROCKETT: Not from BRG.

1 HEARING OFFICER BOUILLON: And the
2 second one, Mr. Ratliff?

3 MR. RATLIFF: That's right, and we also
4 have the final staff assessment part three.

5 HEARING OFFICER BOUILLON: That will be
6 marked as exhibit number 65. And does that also
7 contain any testimony of Mr. Walker?

8 MR. RATLIFF: Yes, the alternatives
9 portion.

10 HEARING OFFICER BOUILLON: And that part
11 will be admitted. Is there any objection to that?

12 MS. CROCKETT: No.

13 MR. ZISCHKE: None.

14 HEARING OFFICER BOUILLON: All right.
15 Was there any supplemental testimony by Mr.
16 Walker?

17 MR. RATLIFF: That was his supplemental
18 testimony.

19 MR. WALKER: There was one page of
20 supplemental testimony on land use that addressed
21 the Burney Falls issue. I'm not sure whether that
22 was included in part three or what.

23 MR. RATLIFF: I believe that's in part
24 two. Hang on a minute.

25 MR. WALKER: I prepared that in early

1 November, so I'm not sure when it was published.

2 HEARING OFFICER BOUILLON: All right,
3 well, rather than try and find it --

4 MR. RATLIFF: That is in part two.

5 HEARING OFFICER BOUILLON: It's in part
6 two?

7 MR. RATLIFF: Yes. Mr. Walker, that's a
8 one-page --

9 MR. WALKER: Yes.

10 MR. RATLIFF: -- piece concerning Burney
11 Falls and land use, is that correct?

12 MR. WALKER: Correct.

13 HEARING OFFICER BOUILLON: Is that --

14 MR. RATLIFF: That's part two.

15 HEARING OFFICER BOUILLON: Can you give
16 me a page number?

17 MR. RATLIFF: 83.

18 HEARING OFFICER BOUILLON: All right.
19 Anything else you need to mark at this time?

20 MR. RATLIFF: Well, I think you just
21 did.

22 HEARING OFFICER BOUILLON: Okay. All
23 right, Mr. Walker, you're excused.

24 MR. WALKER: Thank you. Did you ask if
25 anyone had questions about alternatives? Okay.

1 HEARING OFFICER BOUILLON: Well, I don't
2 know --

3 MS. CROCKETT: I do have some questions.

4 HEARING OFFICER BOUILLON: Oh, I'm
5 sorry.

6 MR. ZISCHKE: I thought both topics had
7 been heard together.

8 HEARING OFFICER BOUILLON: Go ahead.

9 MS. CROCKETT: All right. Did the
10 applicant want to ask some questions? Thank you.

11 CROSS-EXAMINATION

12 BY MS. CROCKETT:

13 Q Mr. Walker, in your review of
14 alternatives on page 24 of your testimony, you
15 have a chart, table 2.

16 A Yes.

17 Q You have identified alternates 1 through
18 10 that would qualify as alternative sites.

19 A Yes, they would qualify for more
20 detailed evaluation.

21 Q For more detailed evaluation.

22 A They pass the screening test.

23 Q The screening test. The one question I
24 would ask about this is nowhere in your testimony
25 did I see a statement made, and I'm not even sure

1 if it would be appropriate, and so I will ask it,
2 was there an evaluation of any of these sites as
3 they relate to the current site, whether it was
4 better or worse?

5 A That would have been, that we would have
6 done had we found significant impacts with the
7 proposed project. But because all the potential
8 significant impacts were found by staff to be
9 mitigated to less than significant, we did not
10 carry out that detailed evaluation to be able to
11 compare the sites.

12 Q So if some impacts are found to be more,
13 or not less than significant, but are in fact
14 significant, then you would evaluate these sites
15 again to see if they were a better situation for
16 siting of the power facility?

17 A Well, staff already determined in other
18 technical areas there would not be any significant
19 impacts, therefore there was no need to do a
20 detailed evaluation. So we wouldn't do it again
21 because staff already found, concluded there
22 wouldn't be significant impacts.

23 MS. CROCKETT: Thank you. I am finished
24 with this witness.

25 HEARING OFFICER BOUILLON: Thank you.

1 MR. RATLIFF: I have no redirect.

2 HEARING OFFICER BOUILLON: So we will
3 admit all of the testimony of Mr. Walker at this
4 time, in parts two and part three of the FSA.

5 We will now take up the topic of noise.
6 And I'd like to start with Mr. Fuller.
7 Whereupon,

8 JEFFREY FULLER
9 was called as a witness herein and after first
10 being duly sworn, was examined and testified as
11 follows:

12 DIRECT EXAMINATION

13 BY MR. ZISCHKE:

14 Q Would you state your name for the
15 record, please?

16 A Yes. My name is Jeffrey Fuller.

17 Q Mr. Fuller, your qualifications were
18 submitted with your November 17th testimony as
19 exhibit 1, is that correct?

20 A Yes.

21 MR. ZISCHKE: And based on that I'd ask
22 that the parties stipulate to Mr. Fuller's
23 qualifications to present the testimony on the
24 subject matter of noise.

25 HEARING OFFICER BOUILLON: The Committee

1 will accept his qualifications.

2 BY MR. ZISCHKE:

3 Q Mr. Fuller, I want to discuss the
4 testimony entitled, direct testimony of Three
5 Mountain Power, Noise, Jeff Fuller, dated November
6 17, 2000.

7 Did you prepare that testimony?

8 A Yes, I did.

9 Q Is that testimony true and correct to
10 the best of your knowledge?

11 A Yes, it is.

12 Q And if asked to testify today would your
13 testimony be substantially the same?

14 A No -- yes, it would be the same, yes.

15 Q Thank you.

16 HEARING OFFICER BOUILLON: Let me try
17 that again. I think he said --

18 MR. FULLER: I know, --

19 HEARING OFFICER BOUILLON: -- there'd be
20 no change.

21 BY MR. ZISCHKE:

22 Q If asked to testify today, would your
23 testimony be substantially the same as your
24 written testimony?

25 A Yes, it would.

1 Q Thank you. Let me also ask you about
2 the document filed by staff in this proceeding,
3 and entitled, Three Mountain Power project,
4 staff's rebuttal and errata for FSA part two and
5 part three issues.

6 Have you reviewed the noise analysis
7 contained in that document?

8 A Yes.

9 Q Do you agree with the conditions of
10 certification contained in that noise analysis?

11 A Yes, I do.

12 Q And with those conditions of
13 certification, based on your analysis, as well as
14 your review of the staff analysis, will the
15 conditions of certification mitigate potential
16 noise impacts to the level of insignificance?

17 A Yes.

18 Q With those conditions will the proposed
19 plant comply with applicable noise laws,
20 ordinances, regulations and standards?

21 A Yes.

22 MR. ZISCHKE: Thank you. The witness is
23 available for cross-examination.

24 HEARING OFFICER BOUILLON: We can
25 continue.

1 (Pause.)

2 HEARING OFFICER BOUILLON: We'll have a
3 momentary break here while the Chairman received a
4 phone call he'd been waiting for.

5 I think, insofar as your -- are you
6 finished with direct?

7 MR. ZISCHKE: Yes, I am.

8 HEARING OFFICER BOUILLON: Okay, let's
9 wait a minute before we get to the cross-
10 examination then. It should just be a minute or
11 two.

12 MR. ZISCHKE: Mr. Hearing Officer, while
13 we have a break with the parties here, should we
14 take care of the stipulated areas of testimony
15 now, do that housekeeping area?

16 HEARING OFFICER BOUILLON: We can do
17 that. Ms. Crockett. With respect to the areas of
18 project description, efficiency, reliability, and
19 waste management, I would propose that we mark
20 those documents, if any additional documents need
21 to be identified, and admit them at this time
22 while we have a break.

23 MS. CROCKETT: You had stated --

24 HEARING OFFICER BOUILLON: The four
25 topics on which you have no cross-examination --

1 MS. CROCKETT: That were stipulated.

2 Burney Resource Group so stipulates.

3 HEARING OFFICER BOUILLON: Mr. Ratliff.

4 MR. RATLIFF: Yes.

5 HEARING OFFICER BOUILLON: Okay. Do you
6 have any documents that need to be identified at
7 this time?

8 MR. ZISCHKE: The documents on those
9 topics are all part of our testimony on part two
10 topics which was in three volumes. Should they be
11 marked separately or should this all be marked as
12 one exhibit, and then attested to by each of the
13 witnesses?

14 HEARING OFFICER BOUILLON: I think -- I
15 don't recall, are the page numbers consecutive
16 through the three volumes, or does each one start
17 with a new page number?

18 MR. ZISCHKE: They start over because
19 the subsequent volumes have a number of exhibits
20 to --

21 HEARING OFFICER BOUILLON: Let's mark it
22 as one exhibit.

23 MR. ZISCHKE: Okay.

24 HEARING OFFICER BOUILLON: All as number
25 66. Consisting of three volumes. And I think

1 they're dated November 17th, is that correct?

2 MR. ZISCHKE: Yes.

3 HEARING OFFICER BOUILLON: Are there any
4 other documents?

5 MR. ZISCHKE: Not with respect to these
6 topics.

7 HEARING OFFICER BOUILLON: All right.
8 It's my understanding that the stipulation is that
9 all parts of those three volumes dated November
10 17, 2000, covering the topics of project
11 description, efficiency, reliability and waste
12 management will be admitted without objection.

13 MS. CROCKETT: Agreed by Burney Resource
14 Group.

15 HEARING OFFICER BOUILLON: And the same
16 will be true of the -- are all those covering part
17 two or part three?

18 MR. RATLIFF: I'd have to look.

19 HEARING OFFICER BOUILLON: Well, how
20 about we do it this way. All those parts of part
21 two, part three and the supplemental --

22 MR. RATLIFF: They're in part two.

23 HEARING OFFICER BOUILLON: Part two.
24 All right. In addition there's a document called
25 Three Mountain Power project, staff's rebuttal and

1 errata for FSA part two and part three. Is there
2 any part of that which pertains to those four
3 topics?

4 MR. RATLIFF: Part two contains, I
5 believe, all of the material that staff is
6 submitting on those four topics.

7 HEARING OFFICER BOUILLON: Okay. And
8 that material on those four topics, project
9 description, efficiency, reliability and waste
10 management, will be admitted, also.

11 It's my understanding that the Burney
12 Resource Group did not offer any testimony on
13 those four topics, is that correct?

14 MS. CROCKETT: That is correct.

15 HEARING OFFICER BOUILLON: And it's my
16 understanding that no other party offered any
17 testimony on those four topics. So that will
18 conclude those four topics, and we've got that
19 part out of the way.

20 So the first six went pretty fast.

21 (Laughter.)

22 HEARING OFFICER BOUILLON: He has
23 returned. Ms. Crockett, you may begin your cross-
24 examination.

25 MS. CROCKETT: The Burney Resource Group

1 will defer cross-examination, will actually turn
2 over cross-examination to Mr. Robert Murray, a
3 member of the Burney Resource Group, in the area
4 of noise.

5 MR. MURRAY: Thank you.

6 CROSS-EXAMINATION

7 BY MR. MURRAY:

8 Q Good morning, Mr. Fuller.

9 A Good morning.

10 Q Did you or anyone from URS Corporation
11 actually perform the noise surveys conducted at
12 the project site or the Hathaway residence?

13 A Yes. I did.

14 Q You were physically there --

15 A Yeah.

16 Q -- and conducted the test?

17 A Yes.

18 Q Very good. Okay, in your report on the
19 July survey performed at the Hathaway residence,
20 you say the average hourly sound level ranged from
21 approximately 51 dba to 59. Yet an independent
22 study performed by Brown Buntin Associates, BBA,
23 at the request of staff, shows the background and
24 L90 noise as low as the mid 30s and the 24 hours
25 average was from 41 to 42 dba.

1 Can you explain this huge difference?

2 MR. ZISCHKE: Could we ask for a
3 clarification of what portions of each study
4 you're referring to, please, so the witness knows
5 what documents, what page of the documents you're
6 referring to.

7 MR. MURRAY: His report is not numbered
8 by pages that I can see.

9 HEARING OFFICER BOUILLON: Mr. Murray, I
10 would suggest you first ask Mr. Fuller if he's
11 aware of that report. And ask him if he's aware
12 of the part of it using the figures you cite.

13 MR. MURRAY: I'm sorry. Actually, those
14 figures were from staff's report, I believe Mr.
15 Baker's. Where it shows the Brown Buntin
16 Associates.

17 BY MR. MURRAY:

18 Q Were you familiar with them, Mr. Fuller?

19 A Yes, I am.

20 Q And are you familiar with the
21 discrepancy, the huge difference of background
22 level readings in the two surveys?

23 A In which metric specifically are you
24 asking the discrepancies? At the LAQ or is it the
25 L90?

1 Q Well, actually in both. And it's funny
2 how I did see how neither of you would address the
3 same methodology. But let's say the L90.

4 A There are actually -- could be several
5 reasons. One, it could be the placement of the
6 microphone, of the sound level meter. That could
7 be one issue.

8 Another issue, I took the sound level
9 measurements in July. And at that time one of the
10 most noticeable -- well, there was two noticeable
11 noise sources out there -- well, three. You have
12 the vehicular traffic issue; you had noise from
13 say crickets and birds; and you also had noise
14 from wind in the trees.

15 Any change in any of those would account
16 for a difference. They're located close to a
17 forest.

18 Q You were, as I understand, your
19 instrumentation was also located quite a bit
20 closer to Black Ranch Road than the applicant's
21 study -- or I mean the staff's study?

22 A The microphone was located approximately
23 100 feet from the centerline of the roadway.

24 Q And staff, as I understand, their
25 instrument was located 100 feet from the rear of

1 the residence, toward the project?

2 A I don't know. That I do not know.

3 Q Okay. Speaking of L90, since you
4 brought it up, on your table, table number 2, I
5 noticed that you have an L90 lower than L minimum
6 a couple places, or a few places on your July
7 survey. Say from 5:00 a.m. to 6:00 a.m.

8 And how can an L90 be lower than an L
9 minimum, can you explain that?

10 A I would say that there is a possibility
11 that they were transposed in that particular case.
12 The L minimum should be lower than the L90.

13 Q Okay. I agree. A few places on there I
14 believe it is, must be transposed, or the data
15 might be flawed. Do you feel that the location
16 suggested by staff, performed by BBA, does
17 indicate a much lower existing noise level at the
18 residence?

19 A They are slightly lower than what I
20 measured, yes.

21 Q Okay, I see in your professional history
22 you were employed by Ogden Environmental and
23 Energy Services. Is that the same company as
24 Ogden Energy, Incorporated?

25 A No, it is not.

1 Q Is it connected whatsoever or -- mother
2 company or --

3 A I have not been an employee of Ogden
4 Environmental Energy and Services Company since
5 1996. And when I left that company at that
6 particular time I believe both Ogden Power and
7 Ogden Environmental Energy Services had the same
8 parent company. I don't know what's happened
9 since that time.

10 Q Okay. When you were in Burney on your
11 project surveys at the Hathaway residence in
12 particular, did you notice, as the BBA report
13 says, that Burney Mountain Power is clearly
14 audible and distinguishable from the ambient noise
15 at that location?

16 A Can you repeat that, please?

17 Q Sure. In your visit to the Hathaway
18 residence in particular in July did you notice, as
19 the BBA report indicates, that the audible noise
20 from Burney Mountain Power is audible and
21 distinguishable from the residence?

22 A Actually I was very -- I paid attention
23 to that issue, I wanted to see if that was
24 possible. And at the time that I was there I did
25 not hear the power plant at that time.

1 Q Okay. And I apologize, I'm not sure
2 which chart this was from, I wasn't aware I was
3 going to have to do that. I believe again
4 staff's.

5 But one chart indicates Three Mountain
6 Power had proposed an increase in their property
7 line level of 11 dba over the existing noise. Are
8 you familiar with that?

9 A No. I did not look at the sound level
10 at the property line.

11 Q If Three Mountain Power was to increase
12 their property line noise 11 dba, would that be a
13 significant increase at the Hathaway residence and
14 other residences in Johnson Park, Veder Road, et
15 cetera, in your opinion?

16 A Well, I don't know, I can't answer that
17 because I don't know what the sound level is
18 today. So I have no idea what that translates
19 into at the Hathaway residence, I don't know.

20 Q Okay. Can you briefly explain how much
21 energy multiplication, or the amount of energy is
22 increased by 11 dba?

23 A More than ten times.

24 Q Thank you. Another page I don't have,
25 I'm sorry, Mr. Bouillon, but in a November 17th

1 report you explained staff guidelines saying, and
2 this is a quote: Generally speaking an increase
3 of 3 dba equivalent or less represents no
4 significant change."

5 HEARING OFFICER BOUILLON: Do you recall
6 that, Mr. Fuller?

7 MR. MURRAY: It's in one of the very
8 first pages.

9 MR. FULLER: Of which report?

10 HEARING OFFICER BOUILLON: He referred
11 to November 17th, --

12 MR. FULLER: Oh, my testimony --

13 HEARING OFFICER BOUILLON: -- which I
14 assumed was your testimony.

15 BY MR. MURRAY:

16 Q Anyway, it was just staff's feeling that
17 you said that 3 dba or less would not be any
18 significant change.

19 Do you believe, with the best available
20 technology today, such as enclosures, good
21 engineering, exhaust mufflers, that the project
22 could end up with less than 3 dba increase at the
23 Hathaway residence, using the best available
24 technology today?

25 MR. ZISCHKE: Could I ask for a

1 clarification of the question. I'm not clearly
2 hearing the number before dba in your question.

3 HEARING OFFICER BOUILLON: Mr. Murray,
4 would you rephrase that question, because I'm not
5 sure I understood what you were asking, either.

6 MR. MURRAY: I wish I could find it in
7 here real rapidly, but basically what I'm saying
8 is in Mr. Fuller's written testimony he quotes the
9 staff guideline, and he says: Generally speaking,
10 an increase of 3 dba or less represents no
11 significant change."

12 So what that's saying is staff thinks
13 that a 3 dba or less is not going to be
14 significant to Mr. Hathaway's residence.

15 My question is with today's technology
16 and Mr. Fuller being an expert, doesn't he believe
17 that we should expect less than a 3 dba increase,
18 that we could put enclosures and mitigation to
19 reduce that to maybe zero dba at the residence.

20 MR. ZISCHKE: I object to the question.
21 I do not think there's a statement about 3 dba in
22 his testimony.

23 MR. MURRAY: Just a second, please.

24 HEARING OFFICER BOUILLON: I'm going to
25 have to sustain that objection. You might be able

1 to ask it a different way, but I think, as asked,
2 that it's objectionable.

3 MR. MURRAY: Okay, I found it. I'm
4 sorry, my copy wasn't -- pages weren't marked, so
5 I found it. Page 2-1 of Mr. Fuller's, under
6 federal highway administration. And it's about
7 midway down on 2.0.

8 BY MR. MURRAY:

9 Q Do you see it, Mr. Fuller?

10 A Yes.

11 Q Okay. If 3 dba or less is considered no
12 significant change, do you think we should attempt
13 to maybe work toward 3 dba or less and not have an
14 impact on the Hathaway residence?

15 A My analysis did contain some of the
16 features that you were discussing. For example,
17 my analysis did contain silencers and enclosures.

18 So I evaluated a plant with silencers
19 and enclosures. And my analysis shows they would
20 comply with the Shasta County general plan, as
21 well as the CEC policy.

22 So, I did not look to anything
23 additional.

24 Q Okay, well, I just mean in your
25 expertise in this field, isn't it very possible to

1 reduce the exposure of Mr. Hathaway's to 3 dba or
2 less?

3 A You can always find silencers that
4 provide additional noise attenuation.

5 Q Very good. In section 4 under
6 environmental consequences, you state, Mr. Fuller,
7 that an increase of 5 db at noise sensitive
8 locations. Don't you feel 5 db over the existing
9 noise could be considered excessive in a rural
10 area with such a low ambient background noise?

11 A Five db is something that is consistent
12 with both the CEC, as well as standards that have
13 been put out by the Federal Transportation
14 Administration. They have considered sound levels
15 of 5 db or less to be not significant.

16 Q I believe the Shasta County document is
17 what you're going by on their general plan, also
18 says that the 50 dba night time, but it stipulates
19 that that limit can be made --

20 HEARING OFFICER BOUILLON: Let the
21 record reflect that the witness nodded yes.

22 MR. FULLER: Yes. I'm sorry.

23 HEARING OFFICER BOUILLON: Mr. Fuller,
24 you're going to have to answer audibly. This is
25 not a dialogue between the two of you.

1 MR. FULLER: I don't think there was a
2 question.

3 HEARING OFFICER BOUILLON: I thought the
4 question was did you use the County -- I'm sorry,
5 I forgot what document it was, but whether you had
6 referred to the County -- I think general plan
7 document for appropriate noise levels.

8 MR. FULLER: Well, I did, yes.

9 MR. MURRAY: Again, I apologize. I
10 don't have the page number, but it's 2.1 Shasta
11 County.

12 BY MR. MURRAY:

13 Q And it says that you used the night time
14 criteria of 50 dba, and that's what you were
15 shooting for. And by the way, I might point out
16 you ended up right at 50 dba at the Hathaway
17 residence?

18 A Well, I wasn't shooting for anything in
19 particular. What I was doing was I was doing an
20 analysis on a particular plant. And based upon my
21 analysis I'm projecting 50 db worst case at the
22 Hathaway residence.

23 Q Okay. The chart that you referred to in
24 the general plan for Shasta County that listed the
25 50 dba, are you familiar that it also states that

1 in a low background noise environment they may
2 require a more stringent level?

3 A I'm not familiar with that. They were
4 talking about how in a low background noise,
5 environment such as a rural environment, they were
6 saying that the 50 db would apply at 100 feet from
7 the residence.

8 Q Yeah, the statement says, not the rural
9 environment, just says with a low ambient
10 background noise on -- I have that general plan
11 here.

12 Anyway, would you consider where BBA
13 performed their testing, would you consider that a
14 low ambient noise location?

15 A Yes.

16 Q Very good. How do you respond to a
17 statement that 50 dba plant noise at the Hathaway
18 residence would be an additional increase over
19 ambient noise of either 7 or 9 dba?

20 Either increases are considered
21 significant by staff. And I think where that's
22 coming from is the BBA result of 41 to 42 dba.

23 A It's staff or BBA that made that
24 comment, I did not.

25 MR. MURRAY: Okay, I think that's all we

1 have for now, thank you.

2 HEARING OFFICER BOUILLON: Does staff
3 have any cross-examination?

4 MR. RATLIFF: No.

5 HEARING OFFICER BOUILLON: Mr. Zischke,
6 any redirect?

7 MR. ZISCHKE: A couple of questions,
8 thank you.

9 REDIRECT EXAMINATION

10 BY MR. ZISCHKE:

11 Q Turning first to the questions about the
12 figure of 3 dba, which I was looking at the
13 testimony which is why I didn't see it in the
14 report at page 2-1, the statement there refers to
15 an increase of noise of 3 dba or less representing
16 no significant change.

17 And then there's a reference to what you
18 do when the noise is between 3 and 10 dba.

19 Is the standard of 3 dba expressed
20 there, does that mean it's essentially a safe
21 harbor if you're under 3 dba, you don't have to
22 look at whether it's significant?

23 A If it's less than 3 dba you're not
24 concerned with if it's significant.

25 Q And between 3 and 10 do you evaluate

1 whether or not it's significant?

2 A Yes.

3 Q In your overall noise study, would you
4 characterize that as being an accurate estimate of
5 what's actually going to occur, or a cautious over
6 estimate or an under estimate of the likely noise
7 impact?

8 A My analysis was actually a very
9 conservative estimate of what would occur.

10 Q Could you explain why it was
11 conservative?

12 A Yeah, I considered a worst case. When I
13 did the analysis you have to look at various
14 issues such as -- you can look at various issues
15 such as proliferation factors. In other words,
16 how will the noise attenuate or decay as it moves
17 away from its source, okay, towards the receptor.

18 And I based my analysis on a point
19 source characteristic which would reduce the sound
20 level at roughly 6 decibels per doubling of
21 distance. So every time you double the distance
22 by -- if you're going to double the distance, the
23 sound level would decrease by 6.

24 In reality what we have is a situation
25 where we have a lot of trees, and also we have a

1 soft ground. We have a situation where the ground
2 has a lot of grasses, for example, very soft
3 materials.

4 In this case you'll actually get a
5 greater reduction than I predicted, roughly 7.5
6 decibels per doubling distance. I think that
7 would be really what is happening.

8 So, I believe that the sound level at
9 the receptor, in reality, probably would be less.
10 But I showed a worse case analysis.

11 In addition to that, I did not take in
12 consideration such factors as shielding, which may
13 occur from onsite as well as offsite structures.

14 So, the sound level at the Hathaway
15 residence can actually be less than predicted.

16 Q Thank you.

17 HEARING OFFICER BOUILLON: Mr. Murray,
18 does that suggest any additional questions?

19 MR. MURRAY: Yes, thank you. Just one
20 or two comments, Mr. Fuller.

21 RE CROSS-EXAMINATION

22 BY MR. MURRAY:

23 Q You mentioned the trees for additional
24 attenuation, and I appreciate that, and I see in
25 your study where you did not take that into

1 account. And I'm glad you didn't because the
2 generator has no -- the project owner has no
3 control over those trees, and tomorrow they may be
4 gone.

5 HEARING OFFICER BOUILLON: Mr. Murray,
6 are you asking a question?

7 MR. MURRAY: Yes. I'm going to get to
8 it, sorry, Mr. Bouillon.

9 BY MR. MURRAY:

10 Q Anyway, and also my question is you said
11 that the summer, the trees, the crickets, you're
12 right up to a 50 dba at the Hathaway residence.
13 And atmospheric changes you mentioned can change
14 that. You said yours was in July, so maybe that's
15 why it was higher than in December.

16 Isn't it true that the sound levels or
17 contours in a hot day kind of dissipate up? But
18 on a colder day would dissipate down, and could
19 maybe greatly affect residences closer?

20 A Atmospheric changes can definitely
21 affect how sound is transferred.

22 However, one clarification of something
23 that you said. My analysis was not based upon
24 summer time. It was based upon -- there was no
25 effect of the atmospheric attenuation whatsoever

1 in the report. So my report was still considered
2 worst case.

3 What I did was take the sound level
4 measurements in the summer. I didn't make my
5 projection for the summer.

6 Q Okay, I'm sorry.

7 MR. MURRAY: That 's all, thank you.

8 HEARING OFFICER BOUILLON: Mr. Zischke.

9 MR. ZISCHKE: Nothing further, thank
10 you.

11 HEARING OFFICER BOUILLON: Mr. Ratliff.

12 MR. RATLIFF: No.

13 HEARING OFFICER BOUILLON: Do you have
14 anything additional that needs to be admitted into
15 evidence?

16 MR. ZISCHKE: We would move into
17 evidence the supplemental noise testimony which is
18 in -- it's part of our part two testimony, and the
19 attached exhibits, including the noise study. And
20 we just designated that as number 66, I believe.

21 HEARING OFFICER BOUILLON: Any
22 objection?

23 MR. RATLIFF: No.

24 HEARING OFFICER BOUILLON: That will be
25 admitted.

1 Mr. Fuller, you're excused. And it's
2 time we call the staff witnesses. Are they
3 present, Mr. Ratliff?

4 MR. RATLIFF: Yes, staff has two
5 witnesses.

6 HEARING OFFICER BOUILLON: They may
7 testify together as a panel.

8 MR. RATLIFF: Yes.

9 Whereupon,

10 STEVE BAKER and JIM BUNTIN
11 were called as witnesses herein and after first
12 being duly sworn, were examined and testified as
13 follows:

14 HEARING OFFICER BOUILLON: Would each of
15 you please state your name and employment for the
16 record.

17 MR. BAKER: My name is Steve Baker; I'm
18 on the Energy Commission Staff.

19 MR. BUNTIN: My name is Jim Buntin; I'm
20 Vice President of Brown Buntin Associates, an
21 acoustical consulting firm.

22 DIRECT EXAMINATION

23 BY MR. RATLIFF:

24 Q Mr. Baker, if I understand correctly you
25 did not prepare the staff FSA portion of the

1 testimony, is that correct?

2 MR. BAKER: Yes, but it was prepared
3 under my supervision.

4 MR. RATLIFF: It was prepared under your
5 supervision by Mr. Kisabuli, is that correct?

6 MR. BAKER: That's correct.

7 MR. RATLIFF: And that piece of
8 testimony has already been entered into evidence.
9 I'm not sure of the exhibit number, but it's
10 already, I think, part of your exhibit list. The
11 staff FSA part one.

12 Mr. Baker, you provided for this hearing
13 supplemental testimony that was dated December 7,
14 2000, is that correct?

15 MR. BAKER: That's correct.

16 MR. RATLIFF: And you provided an errata
17 to that testimony dated December 14, is that
18 correct?

19 MR. BAKER: Yes.

20 MR. RATLIFF: And that was an errata of
21 one of your charts, is that correct?

22 MR. BAKER: Yes, it appended a correct
23 chart, whereas an incorrect one had been appended
24 to the original supplemental testimony.

25 MR. RATLIFF: Is your testimony true and

1 correct to the best of your knowledge and belief?

2 MR. BAKER: Yes, it is.

3 MR. RATLIFF: Do you have any changes to
4 make in it at this time?

5 MR. BAKER: Other than that errata, no.

6 MR. RATLIFF: Did the staff at some
7 point hire Mr. Buntin to perform independent sound
8 measurements at the site?

9 MR. BAKER: Yes, we did.

10 MR. RATLIFF: And that is the purpose
11 for Mr. Buntin testifying today as well, is that
12 correct?

13 MR. BAKER: Yes.

14 MR. RATLIFF: Okay. I have no further
15 questions. These witnesses are available for
16 cross-examination.

17 HEARING OFFICER BOUILLON: Mr. Zischke,
18 do you have any cross-examination for this panel?

19 MR. ZISCHKE: Not at this time.

20 HEARING OFFICER BOUILLON: Mr. Murray
21 again?

22 MR. MURRAY: Yes, thank you. I'll try
23 to do better. Thank you, gentlemen, for doing
24 this.

25 //

1 CROSS-EXAMINATION

2 BY MR. MURRAY:

3 Q Mr. Baker, first of all, thank you for
4 having the independent study conducted. Looking
5 at the results it was apparent that it was needed.

6 I do have some questions that originally
7 were for Mr. Kisabuli -- however you pronounce
8 it -- so I'll address those to you, I presume.

9 In FSA part two dated 11/3/00 under
10 operation noise power plant, and I believe page 9.
11 I just counted mine, I didn't have numbers, but
12 it's the ninth one in my tablet. Very simple
13 question, though.

14 It says, it's quote: Thus the proposed
15 project is expected to produce a level of
16 approximately 11 dba over the current property
17 line ambient noise.

18 My question is who conducted that
19 current ambient noise study?

20 (Pause.)

21 MR. RATLIFF: Could I ask for
22 clarification, please. What is the heading in the
23 staff document that you're referring to?

24 MR. MURRAY: Operational noise.

25 HEARING OFFICER BOUILLON: I'm sorry,

1 would you repeat the statement you're referring
2 to? I found operational noise.

3 MR. MURRAY: Okay, it is page --

4 HEARING OFFICER BOUILLON: That's on
5 page 93.

6 MR. MURRAY: Okay, so mine isn't
7 numbered, but it's 9 of this document, the ninth
8 page of this document.

9 BY MR. MURRAY:

10 Q Anyway, the question is, it says: Thus
11 the proposed project is expected to produce a
12 level of approximately 11 dba over the current
13 ambient noise" and we're speaking property line.

14 My question is who conducted that
15 current ambient study.

16 MR. BAKER: Sir, I'm trying to find the
17 page you're on. Could you tell me the heading
18 over the section you're reading?

19 MR. MURRAY: Under operational --

20 MR. RATLIFF: Steve --

21 MR. MURRAY: -- noise, then power
22 plant --

23 HEARING OFFICER BOUILLON: Which begins
24 on page 93.

25 MR. RATLIFF: Page 93, yes.

1 HEARING OFFICER BOUILLON: And how many
2 paragraphs down from that heading are you?

3 MR. MURRAY: Three. The middle of the
4 third paragraph.

5 MR. BAKER: The section I have begins on
6 page 127, so we have different page numbering
7 here.

8 MR. MURRAY: Better than mine.

9 HEARING OFFICER BOUILLON: You can use
10 mine. I've actually stuck with him.

11 MR. RATLIFF: Apparently the testimony
12 has been paginated differently in different
13 places. So it's the same testimony, but with
14 different pagination. And we have it paginated
15 both ways here.

16 HEARING OFFICER BOUILLON: For the
17 record, the document marked as an exhibit will
18 contain the official pagination that will be used
19 when citing the record in both --

20 MR. RATLIFF: -- page 93 --

21 HEARING OFFICER BOUILLON: -- positions.

22 MR. BAKER: Now that we've gotten past
23 our humorous interlude, Mr. Murray, could you
24 please repeat your question?

25 MR. MURRAY: Sure, thank you.

1 Basically, now that we've found it, my question is
2 they refer to a current ambient level at site was
3 measured at 60.3 db. Then it says: Thus the
4 proposed project is expected to produce a level of
5 approximately 11 db over the current ambient
6 noise.

7 My question is, who conducted this
8 original test that said their property line was
9 60.3 db?

10 MR. BAKER: That's based on information
11 in the application for certification.

12 MR. MURRAY: Very good. And how does
13 that data compare with the same data from Brown
14 Buntin Associates?

15 MR. BAKER: It does not, because the
16 measurement reflected here in the testimony that
17 we just quoted was measurements at the existing
18 project site. And the Brown Buntin information
19 was measured at the Hathaway residence.

20 There are ways we can correlate them,
21 but they're not direct. It's not fair to compare
22 the numbers directly.

23 MR. MURRAY: I understand, Mr. Baker.
24 However, I thought that the person conducting that
25 test went over and attempted to get some at the

1 property line, and did get some for a matter of
2 eight or nine hours. And yet I didn't receive any
3 of that data. Just in his comments he had
4 mentioned that he had attempted that.

5 MR. BAKER: Could we have just a second,
6 please?

7 MR. MURRAY: Certainly.

8 MR. BAKER: Mr. Murray, the 60.3 dba
9 figure that's quoted in the staff's final staff
10 assessment, that's what the applicant predicted
11 the noise level would be at the project site after
12 the new plant is operating.

13 By the time that noise travels to the
14 Hathaway residence it will have attenuated to a
15 lesser number. And that's what we discuss later
16 on in this testimony. And that's what I discussed
17 in my supplemental testimony.

18 The number gets down in the range of 50
19 db by the time it reaches the Hathaway residence.

20 MR. MURRAY: I'm sorry, I don't think
21 that's quite true, Mr. Baker. It says what they
22 predicted was 78 dba at the property line, and the
23 current ambient level at the property line was
24 60.3, thus the 11 dba increase.

25 MR. RATLIFF: Pardon me, is this a

1 question or is this testimony?

2 MR. MURRAY: The question is who
3 conducted the current ambient level at the site of
4 60.3, and does that -- the next question, I'm
5 sorry -- the question was how does that compare
6 with the study that BBA conducted at the property
7 line? Even though it was a limited time, I
8 believe, only eight or nine hours, if I'm correct.

9 MR. BAKER: Sir, I need to refer to the
10 application to correctly identify this
11 measurement. Can you give me a moment, please?

12 MR. MURRAY: Certainly. Thank you. My
13 reason for this question, by the way, is just I
14 saw some discrepancies in the Hathaway location,
15 quite significant in my opinion, 10 db. And I'm
16 just curious if we'll see the same discrepancies
17 at the property line. And that's where they're
18 predicting 11 db increase.

19 HEARING OFFICER BOUILLON: Is that a
20 question you want to ask?

21 MR. MURRAY: No, I was just clarifying
22 while Mr. Baker's looking.

23 HEARING OFFICER BOUILLON: All right.

24 (Pause.)

25 MR. RATLIFF: I believe the question

1 pertains to the data, the applicant's data in the
2 AFC concerning noise measurements. That is why
3 Mr. Baker is now trying to get a copy of the AFC
4 to try to answer the question.

5 HEARING OFFICER BOUILLON: I have the
6 AFC, itself, if somebody needs it.

7 MR. MURRAY: I'm sorry if that's what
8 you thought, but it's not what I was asking.

9 The --

10 MR. BAKER: Okay, Mr. Murray, I have in
11 front of me a copy of the application for
12 certification, and I'm looking at table 6.4-4,
13 where the applicant has measured 48 hour average
14 ambient sound levels.

15 The measurement location ML1 that's
16 quoted in staff's final staff assessment, 60.3 dba
17 LDN, that shows up here as indeed ML1 on this
18 table 6.4-4 in the application. That's where the
19 number came from.

20 Okay, ML1, if we read the footnote in
21 the application, is taken at the southeastern
22 corner of the existing Burney Mountain Power
23 facility.

24 So what they did there to get that
25 number of 60.3 db was they measured the actual

1 sound at the existing power plant.

2 MR. MURRAY: Correct. Now I got that.

3 However, then BBA went up and resurveyed in
4 December the Hathaway residence, the Murray
5 residence and attempted to get some on the
6 property lines.

7 In the BBA notes, and I'll find them
8 here, in your, Mr. Baker, in your summary, the BBA
9 notes indicate they attempted but their meter
10 failed after eight or nine hours.

11 MR. BAKER: Right. The 60.3 you're
12 referring to is an LDN, which accounts for a
13 biasing factor of 10 decibels during the night
14 time hours, okay.

15 So, an LDN has to be based over at least
16 24 hours of measurement, so you can then add 10
17 decibels to the night time measures to calculate
18 the LDN.

19 Unfortunately, the BBA survey did not
20 get 24 hours of measurements at that location.
21 They did get enough hours that they could come up
22 with an LEQ, and equivalent level.

23 If we look in the application, table
24 6.4-4, ML1, they give an LEQ of 58.2. And that
25 correlates fairly closely to the LEQ in the Brown

1 Buntin survey, they're in the mid 50s.

2 MR. MURRAY: Mid 50s.

3 MR. BAKER: So the numbers are not that
4 far apart.

5 MR. MURRAY: Very good. That answered
6 my question. So it's closer than -- the
7 difference is not as great as it was at the
8 Hathaway residence?

9 MR. BAKER: Yes, sir. Brown Buntin
10 could not calculate an LDN because they didn't
11 have enough hours of measurements.

12 MR. MURRAY: Very good, thank you, sir.
13 Okay, along that same line, and I'm dwelling on
14 this 11 db a little bit, but with the BBA survey
15 stating that the operations at the power plant are
16 audible and distinguishable from ambient noise at
17 the Hathaway and Murray residences, along with the
18 low ambient noise levels at these locations, how
19 do you feel or please explain your feelings on a
20 proposed 11 dba property line increase considering
21 the use of today's best available technology, and
22 its affect on the many property owners?

23 It just seems to me excessive. And even
24 if it will get to the applicant, how -- not the
25 applicant, the residents, -- an 8 db increase at

1 the Hathaway residence is what I believe we're
2 going to go up in ambient noise.

3 MR. BAKER: Well, sir, by the time you
4 get through my supplemental testimony we're
5 proposing something considerably less than 8 db at
6 the Hathaway residence.

7 What we're looking at is something
8 closer to 6, and then mitigation at the residence,
9 itself.

10 MR. MURRAY: Six and mitigation possibly
11 the -- excuse me.

12 MR. BAKER: Yes, sir. The intention is
13 that there will not be an 8 db increase at the
14 Hathaway residence. And if things go as planned,
15 that will not be the case.

16 Please understand, the 11 dba increase
17 that's quoted in staff's FSA, that is at the
18 property line of the power plant.

19 MR. MURRAY: I understand.

20 MR. BAKER: Okay, now the controlling
21 law here is the County general plan noise element,
22 which requires that noise increases be measured
23 near the receptor rather than at the source.

24 MR. MURRAY: That's correct.

25 MR. BAKER: Yes, and the 11 is close to

1 the source, it's not near the receptors. So
2 that's why the 11 dba, itself, is really not
3 germane to the discussion here.

4 MR. MURRAY: I understand that. Mr.
5 Baker, I think what I was getting toward there is
6 originally staff indicated that at a 5 dba point
7 they considered it significant from there on.

8 MR. BAKER: Yes, sir, at the receptor.

9 MR. MURRAY: At the receptor, correct.

10 MR. BAKER: Not at the source, not at
11 the power plant.

12 MR. MURRAY: Correct, but already at Mr.
13 Hathaway's we're going from a 42 -- isn't this
14 correct, from 42 to possibly 48. And with
15 mitigation, possibly 50.

16 So it's a 6 to 8 db increase at the
17 Hathaway.

18 (Pause.)

19 MR. BAKER: If you look at my
20 supplemental testimony, the third page of that
21 supplemental testimony, under the topic
22 environmental noise impacts, I discuss how the
23 increase to be expected at the Hathaway residence
24 is only about 6 to 7 dba.

25 Then later on I talk about mitigation at

1 the residence, itself. I did do a check also to
2 look at the noise at the second nearest residence,
3 which is a house up in Johnson Park. And that's
4 several hundred feet farther away from the
5 project. And the increase in noise level there
6 would be less than 5 db.

7 So the only receptors, sensitive
8 receptor that would be impacted by an increase of
9 more than 5 db is the Hathaway residence. And
10 that would be mitigated by the mitigation measures
11 proposed for the residence, itself.

12 MR. MURRAY: So what you're saying, just
13 to reiterate, is that yes, you are expecting
14 possibly a 6 db increase at the Hathaways, and
15 with mitigation if it went to 50, with the
16 insulation and dual pane windows, et cetera, that
17 would be possibly an 8 db increase at the Hathaway
18 residence?

19 MR. BAKER: No, sir, the 8 is too big a
20 number. I don't envision it being any larger than
21 7 db at the residence, and then the mitigation
22 would lessen the effect of that to the equivalent
23 of 5 db.

24 MR. MURRAY: Okay. The BBA report,
25 again, wasn't it roughly 41 to 42 dba background

1 noise?

2 MR. BAKER: Yes, the average background
3 noise level about 41 db.

4 MR. MURRAY: And with mitigation you're
5 proposing up to 50 dba?

6 MR. BAKER: There's an interesting
7 factor at work here. For some reason, and I'm not
8 familiar enough with Burney to understand this,
9 the background noise level in the daytime is
10 actually lower than at night.

11 And yet night time is when people are
12 most sensitive to noise. So, if you look at the
13 night time background noise level, it's greater.

14 Now, you know, we've quoted the average,
15 the 24 hour average.

16 MR. MURRAY: Mr. Baker, I saw how you
17 noted that. In fact, that was going to be one of
18 my questions. And I kind of asked Mr. Fuller
19 that.

20 Don't you think on the short test that
21 BBA performed that possibly that's due to the way
22 the contour energy lines of noise rise during the
23 day?

24 MR. BAKER: The same day/night swap is
25 seen in the numbers in the application for

1 certification. It's unusual, but it's there, both
2 in the applicant's monitoring for the application,
3 and in Mr. Buntin's monitoring for us.

4 I don't know what causes that. Perhaps
5 it's truck traffic on highway 299, long-haul
6 trucks going through town. I don't know. But for
7 some reason --

8 MR. MURRAY: And about how many db
9 difference? Just 1 or 2, as I recall?

10 MR. BAKER: Yes, sir. When you take the
11 night time background of about 43 dba, and you add
12 50 from the power plant, you get 51, which looks
13 to be about an 8 db increase.

14 The point is that with the mitigation at
15 the Hathaway residence itself, there would then be
16 no significant noise impact inside the residence.

17 And, again, the next nearest residence
18 farther away would not see a significant impact.

19 MR. MURRAY: Mr. Baker, when the CEC
20 Staff analyzes noise quantity or levels, do they
21 also consider the quality?

22 MR. BAKER: We look for tonals, for
23 single frequencies that stand out above the
24 overall level. And in both the applications,
25 monitoring and Mr. Buntin's application, there

1 were no tonals noticed.

2 MR. MURRAY: I refer to the BBA report
3 again where he said it's distinguishable and
4 audible. That would be -- and I don't know how to
5 explain it any better, but I saw a headline that
6 said it would be quieter than a vacuum cleaner.

7 If you had a stream outside your house
8 at the same level it would be pleasant, but a
9 vacuum cleaner in your living room while you're
10 watching television.

11 And that's my point of quality. Other
12 than tone, just the continuous increase, not only
13 of the nearest resident, and you noted the second
14 resident, but also the people that have complained
15 about the existing noise.

16 Do you consider any increase, if it's
17 already had complaints, then possibly it's going
18 to worsen this, and you'll have a long process to
19 mitigate afterwards when we could possibly design
20 it where you didn't have complaints? I mean, I
21 just don't know. I know you mentioned Metcalf,
22 and it's very noisy down there in your mitigation.

23 Wouldn't you rather see a zero increase,
24 if possible?

25 MR. BAKER: Sir, it's technically

1 possible to build something that puts out no noise
2 at all. The United States Navy has built nuclear
3 submarines that are literally quieter than the
4 ocean they displace.

5 But that costs billions of dollars. And
6 it's, under the California Environmental Quality
7 Act, not feasible to spend billions of dollars to
8 quiet a half-billion dollar project.

9 So, it's not a feasible mitigation.
10 Therefore, it's not required by California state
11 law for them to mitigate the power plant to no
12 noise whatever.

13 What is required is that they mitigate
14 it such that the increase in noise from their
15 project is not a significant adverse impact on any
16 sensitive receptors.

17 And our testimony here is to show that
18 if they build the project in accordance with the
19 requirements we ask the Commission to place on
20 them, there should not be a significant adverse
21 impact.

22 That does not mean you won't be able to
23 hear the power plant. And that does not mean that
24 you, as a particularly sensitive individual,
25 sensitive to the noises and sounds around you, it

1 doesn't mean that you, personally, won't be
2 annoyed by the power plant.

3 But within the constraints and
4 conventions of the law, and the way it's
5 implemented, the power plant should not present a
6 significant impact that the average individual
7 would find significantly annoying.

8 Now, I understand you live in a very
9 quiet place. And I understand that you can hear
10 noises like that. And I understand how they can
11 be annoying.

12 But under the law, which is what we have
13 to deal with here, the noise from this power plant
14 should not be illegally noisy.

15 MR. MURRAY: Have you asked the
16 Hathaways or the residents in the Hathaways if
17 there's any disturbance from the existing noise at
18 this time?

19 MR. BAKER: I haven't talked to them,
20 but I do know that people around there have noted
21 that they can hear the existing power plant. And
22 I'm sure that occasionally you hear a lot of noise
23 from it. When the ash knockers are working you
24 can hear clanking sounds.

25 In some of your testimony you mentioned

1 that there was a squeal. I assume that's been
2 taken care of by now.

3 MR. MURRAY: That's in my -- it has,
4 yeah.

5 MR. BAKER: Yeah, certainly there are
6 going to be inadvertent and unintentional noises
7 from time to time.

8 One of the things that we ask the
9 Commission to do is to put in place a noise
10 monitoring program such that you or anyone else
11 who is annoyed by sounds from the project, either
12 during its construction or during its continued
13 operation, can file noise complaints. And that
14 those noise complaints will be dealt with in a
15 reasonable and rational manner in an expeditious
16 time period.

17 MR. MURRAY: Appreciate that. I hope we
18 don't have to --

19 HEARING OFFICER BOUILLON: At this
20 point, Mr. Murray, I'm going to interrupt you. We
21 need to take a break for about 15 minutes,
22 actually it's because of the Burney Resource Group
23 and the local television cameras they went to talk
24 to. I believe Ms. Crockett.

25 So, we'll take a break for 15 minutes

1 till five after. I don't know, I got a request.

2 (Brief recess.)

3 HEARING OFFICER BOUILLON: All right, we
4 will reconvene. Mr. Murray, you may continue.

5 MR. MURRAY: Thank you.

6 HEARING OFFICER BOUILLON: And I'll note
7 for the record that during the break I did speak
8 with Mr. Murray and ask him to try a little harder
9 to adhere to the scheduled amount of time required
10 for cross-examination.

11 MR. MURRAY: Yes, you did. All right,
12 welcome back.

13 I'm going to skip a couple of my
14 scripted questions, again, though, on the 11 db
15 possible property line increase, but I would like
16 to know is this 5 db increase for the CEC Staff,
17 this is for you, Mr. Baker, is that really fixed
18 like lower, or is that something that triggers as
19 significant? And anything above a 5 db increase
20 you consider significant?

21 MR. BAKER: In the noise control
22 industry there are some numbers that are
23 customarily used. And it's customarily assumed
24 that if a noise level is increased by 5 decibels
25 or more, there's a potential for a significant

1 adverse impact.

2 We rely on this standard which was
3 probably one of the early uses of it was by the
4 Federal Transit Administration. They have a
5 circular number, C5620.1. It was originally
6 written in 1979, but it's still valid and still
7 used.

8 They say that generally speaking an
9 increase in noise of 3 dba L-equivalent or less,
10 caused by a project, represents no significant
11 change.

12 MR. MURRAY: That was 3 db?

13 MR. BAKER: Three.

14 MR. MURRAY: Three, correct.

15 MR. BAKER: If the increase in noise
16 range is between 3 and 10 db, its significance
17 will depend upon the existing ambient noise, et
18 cetera, et cetera.

19 And then they say -- well, you know, the
20 3 to 10 is an area where you have to analyze it.
21 In order to guide our analysis we pick a number in
22 between. We say 5 db. That's where we become
23 critical. If the increase in noise is going to be
24 less than 5 db, then we consider it's probably not
25 a significant impact. If it's going to be 5 or

1 greater, then we look at it closely.

2 MR. MURRAY: Very good, thank you. Mr.
3 Bouillon is not going to like this, but that
4 spurred another question for me.

5 You mentioned if the ambient noise is
6 low -- or no, what did you say, you said 5 to 10,
7 depending on the ambient noise, is that correct?
8 Don't you feel the ambient noise in the Burney
9 area is much lower than most of the state?

10 MR. BAKER: Actually, no. I've dealt
11 with noise in Energy Commission siting projects
12 for about 7 years now. And the noise levels in
13 Burney are not exceptionally low. I've seen
14 projects closer to populated areas where the
15 background noise levels are several db lower than
16 in Burney. You have a fairly noisy community up
17 there.

18 MR. MURRAY: Okay, are you familiar with
19 the University of California built the Hat Creek
20 Observatory ten miles from the plant, and they
21 chose that site because of its low ambient noise,
22 acoustical and electrical?

23 MR. BAKER: I don't know where that
24 observatory is.

25 MR. MURRAY: It's in the Hat Creek Basin

1 on Bidwell Road. It is ten miles from the plant.

2 But, anyway, I appreciate your answer.

3 Moving along, in your conditions where
4 we would settle problems under noise-4 on what I
5 have page 17, maybe you won't need to look it up,
6 I'll try to quote it.

7 It says: Upon Three Mountain Power
8 first achieving an output of 80 percent or
9 greater, the project owner shall conduct a 25 hour
10 community noise survey. Are you familiar with
11 that?

12 MR. BAKER: Yes, sir.

13 MR. MURRAY: Don't you feel that
14 possibly that Three Mountain Power's surveys were
15 possibly flawed and they should be conducted by an
16 independent person, and maybe even the residents
17 in the area being notified in advance so they
18 could possibly see this testing, or be aware of it
19 prior to and during the survey?

20 MR. BAKER: We customarily require the
21 applicant to do these tests because it's their
22 project, we expect them to spend the money.

23 Now, we expect them also to have the
24 tests done by a qualified competent individual.
25 And we do look at the results. We look at the

1 report that comes in afterwards.

2 And if we have any questions like we did
3 with the recent monitoring that Mr. Fuller did at
4 the Hathaway residence, then we look more closely.

5 If they were to do this monitoring and
6 we were to question that, we would probably do the
7 same thing we did here. We probably would hire on
8 a consultant to go out and check the numbers.

9 MR. MURRAY: Very good.

10 MR. BAKER: But we're not going to
11 require that -- propose that as a requirement in
12 the condition because it may not be necessary.
13 But we do have the option to go back later.

14 MR. MURRAY: If you see something --

15 MR. BAKER: Yes, sir.

16 MR. MURRAY: -- that looks suspicious?

17 MR. BAKER: And if you should see
18 anything going on that you think is suspicious,
19 please refer to conditions Noise-1 and Noise-2,
20 which set up a noise monitoring program to allow
21 yourself and others to file complaints that have
22 to be dealt with. And we monitor those.

23 Any noise complaints that are filed with
24 the applicant, they have to tell us about them.
25 And we check from time to time to make sure they

1 are telling us. And we check to see that they're
2 satisfying the complainants --

3 MR. MURRAY: Thank you.

4 MR. BAKER: -- to the degree possible.

5 MR. MURRAY: Okay. Also, on that same
6 line you have a verification summary report that
7 they issue?

8 MR. BAKER: Yes, sir.

9 MR. MURRAY: Do you suppose possibly
10 that could go to the residents in the affected
11 two-mile radius, also, so they can see what the
12 report states?

13 MR. BAKER: I don't see why we shouldn't
14 make it available to you with the caveat that, you
15 know, please let us help you interpret it.

16 MR. MURRAY: Thank you.

17 HEARING OFFICER BOUILLON: Mr. Baker, if
18 I might inquire, that report, once it gets filed,
19 doesn't it become a public record?

20 MR. BAKER: Yes, sir, it is available.

21 HEARING OFFICER BOUILLON: That would be
22 a record of the California Energy Commission
23 available to any citizen in the state, or the
24 country, for that matter.

25 MR. MURRAY: Mr. Baker, on the Shasta

1 County general plan, and maybe Mr. Buntin, also,
2 on this one, where we are using the 50 dba
3 requirement at the residence, 100 feet from his
4 house, and it is the Shasta general plan table 1,
5 and the footnote states, quote: The County can
6 impose noise level standards which are more
7 restrictive than those specified above upon
8 determination of existing low ambient noise
9 levels.

10 Do you think possibly the County should
11 look into the noise level and see if they think it
12 could be less than 50 dba?

13 MR. BAKER: Actually I don't think it's
14 appropriate in this instance because, you know,
15 you've got background noise levels in the 40 db
16 range. What I think is really more likely here is
17 if they should find an area where the background
18 db levels are in the mid 30 range, or lower, where
19 it's just absolutely deadly still, quiet. Then 50
20 db might not be appropriate.

21 But, as I said, Burney is a relatively
22 noisy community. It's, of course, not like, you
23 know, downtown New York. But it's, compared to
24 quiet places, Burney is not that quiet. And so I
25 don't believe that it would be really justified to

1 apply something less than the numbers that are in
2 the County noise element.

3 MR. MURRAY: When you say Burney is not
4 that quiet, I think on the two tests that BBA
5 conducted at residences, one of them was down in
6 the 30s, the background level. And that was the
7 Veder Road, Murray. I believe some of those it
8 was down in the 30s. Would you consider that a
9 low ambient background?

10 MR. BAKER: Sir, you know, there are a
11 couple numbers here, I believe, yes, 39, 38, for
12 one hour or two hours. But when we say a quiet
13 neighborhood, we're talking where background never
14 gets up that high.

15 So, I know, you know, Burney's a nice
16 mountain community. It's very pleasant. But as
17 far as noise goes, it's really not that quiet.
18 It's not quiet enough, I believe, to trigger any
19 extra attention above and beyond the 50 db limit
20 in the County noise element.

21 Now, you might find somebody in the
22 County to disagree with that. We haven't heard
23 from them.

24 MR. MURRAY: Okay. Well, I think I've
25 covered just about everything. I'm going to skip

1 a couple more, Mr. Bouillon.

2 But I would like for either of you to
3 explain your thoughts on something, Mr. Baker, you
4 did mention. That the daytime noise levels are
5 lower than the night time, and you kind of said
6 maybe the traffic, or you don't know, or you don't
7 believe it's ambient conditions?

8 MR. BAKER: My guess was that it might,
9 and again I don't live in Burney, so I don't know,
10 but in other instances I've seen where truck
11 traffic can be a general controlling factor in
12 background noise levels.

13 And perhaps there's a lot of night time
14 truck traffic. Truckers tend to travel at night.
15 There's less traffic on the roads, fewer highway
16 patrolmen out there. They take the chances with
17 the deer. And they run at night.

18 So, it's possible. Again, I'm only
19 guessing, just from based on experience. It's
20 possible that the slightly higher night time
21 ambient is due to truck traffic on highway 299.

22 MR. MURRAY: Okay.

23 HEARING OFFICER BOUILLON: Excuse me,
24 Mr. Murray. Mr. Buntin, did you have any
25 response to that question? I believe he asked it

1 of both of you.

2 MR. BUNTIN: Thank you, no, I didn't
3 have anything to add to that.

4 MR. MURRAY: Okay. And I dwelt on this
5 before, and I don't totally understand it, but the
6 night time noise, we know that we can hear the
7 power plant, the existing power plant.

8 And if we're going to increase it 6, 8,
9 whatever the dba you're talking about, we've got
10 to be able to hear that tremendously more, isn't
11 that true?

12 MR. BUNTIN: Is that directed to me?

13 MR. MURRAY: Either one of you.

14 MR. BUNTIN: Well, what you're going to
15 hear is something different than what's there
16 today. I wouldn't use the term tremendous because
17 it's too subjective.

18 But if you do -- if there is a change of
19 6 decibels it's going to be clearly noticeable.
20 And what will happen is the sound that you used to
21 hear as the quietest sound will be replaced by the
22 sound of the power plant.

23 And as Mr. Baker indicated, the
24 conditions of approval are structured so that
25 there should be no, what should I say, anomalous

1 frequency content, anything that would call your
2 attention to it.

3 And we expect that power plants produce
4 a broad band noise, just kind of a background -- I
5 don't want to prejudice this, but just general
6 noise, maybe like an FM radio tuned between
7 stations, that sort of a sound.

8 So, the fact that you, again, as Mr.
9 Baker said, you will be able to hear this, it will
10 replace what was there before, in the quietest
11 hours of the day, but it won't necessarily be
12 annoying in and of itself.

13 You may be annoyed because you hear it
14 now, and you didn't hear it before. But the
15 noise, itself, will not be annoying, in and of
16 itself. The character of it, I'm sorry.

17 MR. MURRAY: Thank you very much. I
18 think that's it, sir. Thank you.

19 HEARING OFFICER BOUILLON: Yes, Mr.
20 Ratliff.

21 MR. RATLIFF: A few questions.

22 HEARING OFFICER BOUILLON: Go ahead.

23 REDIRECT EXAMINATION

24 BY MR. RATLIFF:

25 Q Mr. Baker, there was some discussion and

1 questioning concerning the significance threshold
2 of 5 decibels of increase. And in this case there
3 was more than a 5 decibel increase at the nearest
4 receptor, is that correct?

5 MR. BAKER: Yes.

6 MR. RATLIFF: And you did consider that
7 prior to mitigation to be a significant impact in
8 your testimony, is that correct?

9 MR. BAKER: Yes, and that's why we have
10 proposed the additional mitigation.

11 MR. RATLIFF: And you proposed the
12 additional mitigation because of that?

13 MR. BAKER: Yes.

14 MR. RATLIFF: Are there other measures
15 that could also be applied besides the mitigation
16 measures that have been proposed here that would
17 also result in a quieter environment from the
18 power plant?

19 MR. BAKER: Well, yes. The applicant
20 could take extra measures to make the power plant,
21 itself, quieter. They could purchase more quiet
22 equipment. They could install more of the
23 equipment in sound insulated buildings and
24 structures.

25 They could erect sound attenuating walls

1 and barriers where necessary. They could put up a
2 higher berm around the project. They might even
3 do something high tech and use active noise
4 cancellation in the stack to cut the exhaust
5 noise.

6 Lots of things are possible.

7 MR. RATLIFF: Thank you. I have no
8 other questions.

9 HEARING OFFICER BOUILLON: Mr. Murray,
10 do you have any additional cross based upon that
11 limited redirect?

12 MR. MURRAY: No, thank you. That'll do.

13 HEARING OFFICER BOUILLON: Mr. Ratliff,
14 have we yet marked the supplemental testimony
15 filed December 8th? I don't believe we have.

16 MR. RATLIFF: Well, the supplemental
17 testimony -- I'm sorry, rebuttal and errata is the
18 title.

19 MR. RATLIFF: We have not marked the
20 December 14th errata, no.

21 HEARING OFFICER BOUILLON: What's that?

22 MR. RATLIFF: We have not marked the
23 December 14 errata.

24 HEARING OFFICER BOUILLON: We will mark
25 that as exhibit number 67. Are you offering the

1 testimony of Mr. Baker and Mr. Buntin at this
2 time?

3 MR. RATLIFF: Yes.

4 HEARING OFFICER BOUILLON: Any
5 objection? Hearing none, that will be admitted.

6 Gentlemen, you are excused, I believe.

7 MR. ZISCHKE: Mr. Bouillon, if we could,
8 I wanted to clarify something because --

9 HEARING OFFICER BOUILLON: Oh, you have
10 some questions? I'm sorry.

11 MR. ZISCHKE: No, no questions. I have
12 just to clarify, our noise witness would like to
13 return, and I just want to clarify generally when
14 we conclude a topic we were planning on our noise
15 witness going back to his office and the topic
16 being closed. And with the exception of topics
17 out of order, where something's being carried
18 over, is that the way the hearing will be
19 proceeding?

20 HEARING OFFICER BOUILLON: Yes.

21 MR. ZISCHKE: Okay, thank you.

22 HEARING OFFICER BOUILLON: I believe I
23 did excuse your noise witness.

24 MR. ZISCHKE: Yes, yes, I just wanted to
25 be sure. And that means then the record's closed

1 on that topic, is that correct?

2 HEARING OFFICER BOUILLON: I don't know
3 yet. Just a second. No, the topic is not closed.
4 I believe we have a witness, Mr. Murray.

5 MR. ZISCHKE: Yes.

6 HEARING OFFICER BOUILLON: And he is up
7 now.
8 Whereupon,

9 BOB MURRAY

10 was called as a witness herein and after first
11 being duly sworn, was examined and testified as
12 follows:

13 DIRECT EXAMINATION

14 BY MS. CROCKETT:

15 Q Mr. Murray, did you prepare the
16 testimony that you filed and submitted to the CEC
17 in this hearing?

18 A Yes.

19 Q Do you have any corrections to that
20 testimony at this time?

21 A Yes, I do.

22 Q Would you continue, please.

23 A Okay. I filed my testimony in February
24 and quite a few things have changed since then, so
25 I'll partially read them. A lot of those I've

1 already covered.

2 Briefly, and it was asked earlier, yes,
3 in item 2 I talked about a squeal coming from
4 Burney Mountain Power. Well, during a lengthy
5 outage from just after New Years through Memorial
6 Day weekend I believe they made repairs to the
7 fuel conveyance system and that squeal has been
8 mostly eliminated.

9 Next, it item 3 of my declaration, I
10 stated that Three Mountain Power report on noise
11 makes reference to Shasta County's, quote,
12 "conditionally acceptable property line CNL of 75
13 dba of the general plan."

14 I now believe this requirement only
15 applies to transportation noise related projects.
16 The guideline for nontransportation new projects
17 would be table 1 of the plan which would be a 50
18 dba LEQ night time maximum.

19 And that's where the table also says
20 that the County can impose level standards which
21 are more restrictive than those specified based
22 upon determining of existing low ambient noise
23 levels.

24 With the Hathaway residence existing
25 night time average background noise of 42 dba, I

1 personally believe even a 3 dba increase would be
2 excessive for a rural area. Let alone a 60 db
3 increase suggested by staff.

4 With the existing Burney Mountain Power
5 noise being audible and distinguishable from the
6 ambient noise, as the BBA report states, we must
7 consider quality.

8 This noise cannot -- we cannot hear the
9 crickets at my house any longer because of the
10 existing noise at times.

11 Finally, and lastly, in item 4,
12 basically my item 4 I did question the original
13 Three Mountain Power ambient noise level study. I
14 questioned the instrumentation location. Burney
15 Mountain Power's operating condition. And the
16 high ambient noise that they indicated at the
17 Hathaway residence.

18 And by the way, I think it should be
19 called high existing noise, not ambient, because
20 the noise is basically coming, a lot of it, from
21 industry right around there. Ambient makes it
22 sound like it's something natural.

23 Okay, the applicant did rerun a portion
24 of the test in July at that Hathaway residence.
25 Again, the existing noise was high, 46 to 47 dba.

1 Thankfully, as Mr. Baker noted, staff questioned
2 the location of the instrumentation that would
3 tend to maximize traffic noise in an otherwise
4 quiet environment.

5 Staff then had BBA perform a noise
6 survey at the residence and found the 24 average
7 41 to 42 dba. At the same time they also
8 performed the same survey at my residence. The
9 data indicates existing background noise 4 to 6
10 dba lower at my residence than at the Hathaway's.

11 The BBA report states for both
12 residences, and again the operations of the power
13 plant are audible and distinguishable. For me
14 that's real important. That means we know what
15 we're hearing; it's definitely a power house.

16 We should not increase the operational
17 noise at all. The USEPA recommends using the best
18 available technology as the Crockett Cogen did
19 down out of C&H Sugar, keep the property line
20 levels at 55 dba. And we're talking project
21 property lines.

22 A one-time design could show a good
23 neighbor attitude before the plant is built,
24 rather than a length noise complaint process after
25 it's built.

1 I truly believe that after the Three
2 Mountain project is built, the existing Burney
3 Mountain Power will be shut down. We therefore
4 have an opportunity to lower the overall operation
5 noise in the community, which Mr. Baker said is
6 high in Burney, and maybe that's why.

7 In the survey conducted by applicant it
8 states, crickets added to the existing noise.
9 Well, like I said, sadly at times we can't hear
10 these crickets or bullfrogs anymore over Burney
11 Mountain Power.

12 It was also stated the project would be
13 quieter than a vacuum cleaner. But who would want
14 to listen to a vacuum cleaner 24 hours a day?

15 That's it.

16 Q Are those corrections that you want to
17 include in your testimony at this time?

18 A Yes, they are.

19 Q And everything is true and correct to
20 this point?

21 A Other than those corrections, yes, they
22 are.

23 Q Thank you.

24 MS. CROCKETT: The witness is ready for
25 cross.

1 HEARING OFFICER BOUILLON: Mr. Zischke,
2 before you begin, I'd like to ask a question of
3 Mr. Murray.

4 EXAMINATION

5 BY HEARING OFFICER BOUILLON:

6 Q I've received a copy of your testimony
7 dated February 17th. The first paragraph of that
8 appears to give your qualifications, is that
9 correct?

10 A That's correct.

11 Q There's no separate sheet of
12 qualifications?

13 A No, sir.

14 Q And attached as exhibits are several
15 photographs.

16 HEARING OFFICER BOUILLON: And if I
17 might inquire of Ms. Crockett, have the originals
18 been filed with the docket office?

19 MR. MURRAY: I believe I can answer
20 that. I believe not. Only electronically, but I
21 have some in my folder I'll gladly give you.

22 HEARING OFFICER BOUILLON: I would
23 indicate to all of you that if you expect us to
24 make any use or any interpretation of the
25 photographs, the Xerox copies are really useless.

1 MS. CROCKETT: We'll have the --

2 HEARING OFFICER BOUILLON: So we will
3 have to have the originals at some point in time.

4 MS. CROCKETT: If Mr. Murray has the
5 originals, we'll have them -- we'll submit them
6 today as exhibits.

7 HEARING OFFICER BOUILLON: All right,
8 Mr. Zischke, you have questions?

9 MR. ZISCHKE: I just have a couple of
10 questions.

11 CROSS-EXAMINATION

12 BY MR. ZISCHKE:

13 Q Mr. Murray, have you visited the
14 Crockett site that you referenced?

15 A Many times, yes.

16 Q Have you measured the noise there?

17 A No, sir.

18 MR. ZISCHKE: That's all, thank you.

19 MR. RATLIFF: Mr. Murray, if I could
20 just ask --

21 HEARING OFFICER BOUILLON: I would like
22 to make a comment. I had allowed, at the request
23 of the applicant, 20 minutes for cross-
24 examination. And I want to say I'm very proud of
25 the way you used your time.

1 (Laughter.)

2 MR. ZISCHKE: Thank you.

3 CROSS-EXAMINATION

4 BY MR. RATLIFF:

5 Q Mr. Murray, I wanted to ask some
6 questions just to clarify the situation in Burney.
7 How far do you live from the power plant, the
8 existing power plant?

9 A I would estimate it at just over a mile
10 and a half.

11 Q You said the existing power plant is not
12 only audible, but I think you're saying it's loud
13 at your residence, is that right?

14 A Yes, the BBA report, and I was proud of
15 the wording he put in, he called it
16 distinguishable. Mr. Knight and I have talked
17 more than a time or two about different operating
18 conditions, and he's made corrections to them.
19 But he can verify that I, indeed, do hear when his
20 superheater bypass is going; when he has a
21 pressure relief valve that has a problem with it;
22 when they're starting up early and their auger
23 jets are making noise. And they're all
24 identifiable. And I have talked with the
25 existing operators about it.

1 Q Are you aware of the sound in the
2 wintertime when your windows are closed? Or is it
3 only in the summertime?

4 A Believe it or not, sir, I don't close my
5 windows in the winter. We keep ours open in our
6 bedroom. However, up until this year normally
7 Three Mountain Power would be shut down for a long
8 time during the winter. This last year he shut
9 down for Christmas week, and then started up for a
10 few days. And then shut down again right after
11 New Years until Memorial Day.

12 With the situation in our energy market
13 as it is now, that condition has changed. Even
14 later this year, since then, he was doing a weekly
15 startup and shutdown. And now they're pretty much
16 running around the clock I think.

17 So the conditions have changed there.
18 But we do hear it substantially in the winter.
19 And, in fact, I think probably moreso.

20 Q So your last answer was a partial answer
21 to my last question. And that was how much does
22 the power plant typically operate, the existing
23 one?

24 You said right now it's operating a
25 great deal of the time. Prior to this most recent

1 episode, what would you say the percentage of time
2 it operates?

3 A Well, yes, right now I think since
4 Memorial Day they've had maybe one outage that I'm
5 aware of, which is not typical.

6 I would say prior to that they operated
7 on a weekly basis. They would shut down
8 frequently on weekends, and for a lengthy time in
9 the winter. I don't think it was economical in
10 the winter to operate.

11 But I'm sure applicant could address
12 those questions better.

13 Q Okay.

14 MR. RATLIFF: Thank you.

15 MR. MURRAY: You bet.

16 HEARING OFFICER BOUILLON: Do you have
17 any additional redirect?

18 MS. CROCKETT: Just one question on
19 redirect.

20 REDIRECT EXAMINATION

21 BY MS. CROCKETT:

22 Q Applicant has asked you if you measured
23 the sound of the Crockett facility, Mr. Murray.
24 How do you know that they -- question number one,
25 how much time have you spent at the Crockett

1 facility?

2 A To answer that question I worked for
3 Cal-ISO as a contract field engineer. And I
4 install a piece of equipment called a remote
5 intelligent gateway.

6 On that project alone I probably worked
7 16 days at the facility, and another 10, 12 at
8 Folsom.

9 Q You stated that you know that they have
10 to meet 55 at their property line.

11 A Fifty-three --

12 Q How -- 53 --

13 A -- 53 at --

14 Q Would you clarify where that information
15 came from?

16 A You bet. When I first arrived at
17 Crockett, because of a hearing loss that I have, I
18 pay attention to loud power producing equipment
19 that I should avoid or wear hearing protection.

20 I got to the Crockett facility and I
21 thought, oh, boy, this place is shut down today.
22 This is going to be nice. I went in the control
23 room and it was full load, 150 megawatts.

24 I consequently inquired of the plant
25 engineer, and I have an email copy of it,

1 Peter So, and asked him what his requirements are.
2 And it is 200 feet from his building, which I have
3 a picture of, also. On Lorning Street they have
4 to meet a 53 db requirement, and they do so.

5 Q And their property line is how far?

6 A I would be guessing on the property
7 line, but I imagine it ends at C&H Sugar, I bet it
8 goes right up to the street.

9 Q Feet? Yards?

10 A It's less than 200 feet to the street,
11 so it's probably right at 200 feet.

12 Q Thank you.

13 A You're welcome.

14 MS. CROCKETT: There's no more questions
15 from BRG.

16 HEARING OFFICER BOUILLON: Mr. Zischke.

17 MR. ZISCHKE: One question.

18 RECROSS-EXAMINATION

19 BY MR. ZISCHKE:

20 Q Crockett is a city with a number of
21 residents, is that correct?

22 A That's correct.

23 Q Do you know the closest residence to the
24 property line of the Crockett plant?

25 A I would -- I don't know, but I would

1 guess it's right across Lorning Street.

2 MR. ZISCHKE: Thank you.

3 HEARING OFFICER BOUILLON: Mr. Ratliff.

4 MR. RATLIFF: Yes.

5 RECROSS-EXAMINATION

6 BY MR. RATLIFF:

7 Q Mr. Murray, are you familiar with the
8 configuration of the power plant at Crockett and
9 the sugar bins that are owned by the company that
10 built the power plant?

11 A Somewhat, yes. I'm familiar with the
12 configuration and I do know that it's a combined
13 cycle unit, 150 megawatts.

14 Q Do you know if the turbine building is
15 on the north side of a rather large structure
16 which are the existing sugar bins for the -- that
17 the structure that was there prior to the power
18 plant?

19 A The turbine building, itself, goes from
20 Lorning Street, then there's nothing, to the
21 turbine building that is all enclosed, if that's
22 what you're asking.

23 But, yes, the turbine is on the north
24 side of a structure.

25 Q Yes.

1 A They have put a structure around the
2 turbine building, or they have a turbine building.

3 MR. RATLIFF: Thank you.

4 MR. MURRAY: You're welcome.

5 HEARING OFFICER BOUILLON: That
6 concludes this witness. We will mark his
7 testimony as exhibit number 68, that is the
8 testimony of J. Robert Murray, dated February 17,
9 2000. Attached as exhibits to that testimony are
10 five photographs, and I will expect the Burney
11 Resource Group to replace the documents filed in
12 the docket office with the originals. And that
13 can be done by supplying the Hearing Office with
14 those originals.

15 MS. CROCKETT: Mr. Murray was asking do
16 you want them submitted right now?

17 HEARING OFFICER BOUILLON: That would be
18 fine if he has them.

19 MS. CROCKETT: We can do them right now.

20 HEARING OFFICER BOUILLON: Any objection
21 to the admission of that testimony? Mr. Ratliff?

22 MR. RATLIFF: No.

23 HEARING OFFICER BOUILLON: All right,
24 I've received from Mr. Murray actually more than
25 five photographs. Would you like to look at them,

1 Mr. Zischke?

2 MR. ZISCHKE: Yes, if we haven't seen
3 them before.

4 MS. CROCKETT: I would, too.

5 (Laughter.)

6 HEARING OFFICER BOUILLON: Why don't we
7 pass them -- starting with Mr. Zischke we'll pass
8 them around the table. Mr. Buell, will you do the
9 honors.

10 MR. ZISCHKE: Or can we simply request
11 that the copies of the photographs that were
12 previously sent by photocopy are submitted?

13 HEARING OFFICER BOUILLON: I don't know,
14 I didn't look at them closely enough. I do know
15 that there's more pictures there than the
16 photographs attached to his testimony.

17 I will either accept a stipulation by
18 all the parties that all of those photographs can
19 be attached as an exhibit to his testimony, or
20 that the ones, if we cannot reach an agreement on
21 that, that the ones that are the originals of
22 those that are actually photocopies be accepted.

23 MR. ZISCHKE: Given that we've reviewed
24 the five that are attached as photocopies, I'd ask
25 that those five be submitted. I don't think

1 there's any foundation for what the other four
2 photographs may show. And these five were
3 circulated before.

4 HEARING OFFICER BOUILLON: Mr. Ratliff,
5 would you like to see them before you make a
6 comment?

7 MR. RATLIFF: Yes.

8 (Off-the-record discussions.)

9 HEARING OFFICER BOUILLON: I would
10 indicate for the record, Ms. Crockett, you're not
11 supposed to be surprised by all this.

12 (Laughter.)

13 HEARING OFFICER BOUILLON: They're your
14 photographs.

15 MS. CROCKETT: Burney is an unusual
16 community. We work independently and together.

17 MR. RATLIFF: We have no objections to
18 the photos.

19 HEARING OFFICER BOUILLON: Mr. Buell,
20 would you hand them to Ms. Crockett, please.

21 Ms. Crockett, so that you'll know, Mr.
22 Zischke is proposing to limit the photographs to
23 only those that are, in fact, attached to the
24 witness. If you oppose that, I would like to hear
25 some solid legal or factual reasons why I should

1 accept others.

2 MS. CROCKETT: I have no objection with
3 staff to all pictures being included. And --

4 HEARING OFFICER BOUILLON: You want them
5 all included?

6 MS. CROCKETT: -- I would support that
7 they be included.

8 HEARING OFFICER BOUILLON: Why should we
9 not limit it just to the five that were attached
10 to his testimony, that's my question.

11 MS. CROCKETT: There is one additional
12 picture, two additional pictures, the one with the
13 eagle is one of the ones submitted. I think he
14 has two shots of the same with the mountain. I
15 think that is one of the identicals that he
16 submitted as a view which clearly shows there's no
17 obstructions.

18 I think this, without reviewing, I think
19 this is the one that was included.

20 The other pictures are just more
21 clarification of the same area. And I think it
22 would help the staff and the Committee to see the
23 area. Those would be my support of the pictures
24 for evaluation.

25 HEARING OFFICER BOUILLON: If I might

1 look at them now.

2 (Pause.)

3 MS. CROCKETT: May I make a comment
4 while you're reviewing those pictures?

5 HEARING OFFICER BOUILLON: Excuse me?

6 MS. CROCKETT: May I make an additional
7 comment that just came to mind --

8 HEARING OFFICER BOUILLON: Just a
9 minute.

10 MS. CROCKETT: -- while you're reviewing
11 those pictures?

12 HEARING OFFICER BOUILLON: Just a
13 minute.

14 (Pause.)

15 HEARING OFFICER BOUILLON: All right, I
16 notice in trying to match the photographs to the
17 ones that are attached to his testimony that at
18 least one, and it appears that two are not
19 identical, although they are close. They seem to
20 have been not taken from the same location, at
21 least.

22 Ms. Crockett, would you care to explain
23 the difference?

24 MS. CROCKETT: Actually, could Mr.
25 Murray explain the difference between the two, or

1 would you prefer me to?

2 HEARING OFFICER BOUILLON: I would
3 prefer that the person who took the pictures
4 explain it.

5 MS. CROCKETT: Mr. Murray.

6 HEARING OFFICER BOUILLON: Mr. Murray,
7 would you please come back to the witness stand.
8 You're still under oath.

9 MR. MURRAY: I'm sorry, I didn't realize
10 I had stuck more pictures in there than we had
11 sent in originally.

12 Basically all I've done is those were
13 some pictures that I had taken from my residence.
14 I took them for the reason to show the floods of
15 Burney Creek and Goose Creek right in front of my
16 residence in some cases.

17 I took others to show an eagle in a tree
18 right in front of my residence. And I took them
19 for not the reason that I showed them here. I did
20 them just because it was a pretty scene at the
21 time.

22 But I thought it might help explain why
23 the noise, at times, can be amplified over the
24 water, et cetera.

25 All those pictures were shot at the same

1 time, and if I grabbed them out of my photo album,
2 I didn't really pay attention to which ones I had
3 previously submitted.

4 And I thought you may want them today,
5 so I just grabbed some thinking they were similar.

6 HEARING OFFICER BOUILLON: I think at
7 this time what we're going to do is we're going to
8 accept five of these photographs which are
9 identical or nearly identical to the ones attached
10 to his testimony.

11 The other four, which seem in large part
12 to be duplicative of the first five, will not be
13 admitted inasmuch as they were not previously
14 circulated among the parties.

15 And we will return those to Mr. Murray.
16 So we will replace the five that I'm keeping, and
17 if any of the parties would like to look at those,
18 they are -- two of them appear to be slightly
19 different, but taken from exactly the same
20 location. One just has a pan of the scene a
21 little bit higher on the rooftop than the other.

22 You're excused, Mr. Murray.

23 MR. MURRAY: Thank you.

24 HEARING OFFICER BOUILLON: Before we
25 close this topic we have admitted Mr. Murray's

1 testimony and photographs. We have admitted
2 Mr. Flores' testimony, I believe.

3 MR. ZISCHKE: That's correct.

4 HEARING OFFICER BOUILLON: And we have
5 admitted portions of the supplemental -- or excuse
6 me, the rebuttal and errata from the staff, which
7 is exhibit number 67. I propose that we also, if
8 we have not already done so, enter all of the
9 noise testimony contained in the FSA parts one,
10 two, and three, wherever it may be located. That
11 would be the testimony of Mr. Kisabuli, and I
12 don't know if Mr. Baker has any additional
13 testimony in there or not. But in any event,
14 testimony related to noise.

15 MR. RATLIFF: Yes, in part one it was
16 Mr. Kisabuli.

17 HEARING OFFICER BOUILLON: Yes, and that
18 is exhibit 56, for your information. And that
19 will close the topic on noise.

20 It's now a quarter to 12, Mr. Chairman,
21 what's your pleasure? We can either begin the
22 topic of visual resources, or take an early lunch.
23 Visual resources we have Mr. Flores from the
24 staff, Ms. Gale and Mr. Richmond from the
25 applicant. I believe they're all here.

1 MR. ZISCHKE: That's correct.

2 PRESIDING MEMBER KEESE: I guess I'd ask
3 if you think we could do it in a half an hour.
4 That would be my template. If we can, we should
5 give it a shot. If not, let's break now.

6 MR. ZISCHKE: Our direct will be very
7 brief.

8 HEARING OFFICER BOUILLON: Burney
9 Resource Group indicated ten minutes total for the
10 applicant's witnesses, so we ought to be able to
11 do it in half an hour.

12 MS. CROCKETT: If even if it's ten
13 minutes.

14 HEARING OFFICER BOUILLON: Okay.

15 PRESIDING MEMBER KEESE: Okay, let's
16 finish, let's do this.

17 HEARING OFFICER BOUILLON: We'll take
18 Mr. Gale and Mr. Richmond as a panel. Ms. Gale,
19 I'm sorry.

20 MS. GALE: Accepted.

21 Whereupon,

22 MARSHA GALE and KEN RICHMOND
23 were called as witnesses herein and after first
24 being duly sworn, were examined and testified as
25 follows:

1 DIRECT EXAMINATION

2 BY MR. ZISCHKE:

3 Q If you could each state your name for
4 the record.

5 MS. GALE: Marsha Gale.

6 MR. RICHMOND: Ken Richmond.

7 MR. ZISCHKE: Same question to both of
8 you. Were your qualifications submitted with your
9 supplemental testimony and identified as exhibit 1
10 to that testimony?

11 MS. GALE: Yes.

12 MR. RICHMOND: Yes.

13 MR. ZISCHKE: I'd ask that the parties
14 stipulate based on those qualifications submitted
15 that these witnesses are qualified to testify on
16 the subject matter of their testimony.

17 HEARING OFFICER BOUILLON: The
18 Committee, without a stipulation, will accept
19 their qualifications.

20 MR. ZISCHKE: Ms. Gale, let me briefly
21 discuss the testimony entitled, supplemental
22 testimony on visual resources, Marsha Gale, dated
23 November 17th.

24 And just to be clear, we're asking
25 questions about the supplemental testimony since

1 there's already been direct testimony on visual
2 resources. We're just focused on the supplemental
3 testimony.

4 Did you prepare that supplemental
5 testimony?

6 MS. GALE: Yes.

7 MR. ZISCHKE: Is that testimony true and
8 correct to the best of your knowledge?

9 MS. GALE: Yes, it is.

10 MR. ZISCHKE: And if asked to testify
11 today would your testimony be substantially the
12 same?

13 MS. GALE: Yes.

14 MR. ZISCHKE: Mr. Richmond, let me ask
15 you about the testimony entitled, supplemental
16 testimony on visual resources, Ken Richmond, dated
17 November 17, 2000. Did you prepare that
18 supplemental testimony?

19 MR. RICHMOND: Yes, I did.

20 MR. ZISCHKE: Is that testimony true and
21 correct to the best of your knowledge?

22 MR. RICHMOND: Yes, it is.

23 MR. ZISCHKE: And if asked to testify
24 today would your testimony be substantially the
25 same?

1 MR. RICHMOND: Yes, it would be.

2 MR. ZISCHKE: Thank you. The witnesses
3 are available for cross-examination.

4 HEARING OFFICER BOUILLON: It's my
5 understanding the staff has no questions?

6 MR. RATLIFF: No.

7 HEARING OFFICER BOUILLON: Ms. Crockett.

8 CROSS-EXAMINATION

9 BY MS. CROCKETT:

10 Q Mr. Richmond, Ms. Flores (sic), the same
11 question is asked. Did you interview any of the
12 homeowners about the impacts or take pictures from
13 the actual key points of their homes for visual
14 impacts?

15 MR. ZISCHKE: I would object if that's
16 not limited to the supplemental testimony, which
17 was evaluating the changes in the mitigation plan
18 that was submitted. This is not additional
19 redirect on the overall testimony of visual.

20 MS. CROCKETT: I'm sorry, I'll redirect
21 that.

22 HEARING OFFICER BOUILLON: I would agree
23 with Mr. Zischke. Please limit yourself to the --
24 you might ask her a question, did you take any
25 additional photographs to make any additional

1 analysis. But you know that already.

2 MS. CROCKETT: I'm sorry.

3 The size of the plume in the
4 supplemental analysis will not change during
5 summer pumping, is that correct?

6 MR. RICHMOND: The size of the plume?

7 MS. CROCKETT: Correct.

8 MR. RICHMOND: It depends upon the
9 conditions. The typical size of the plume will be
10 about the same as it was before. Longer and
11 larger plumes will occur less frequently.

12 MS. CROCKETT: Also, were any of these
13 key point areas that would be impacted by the
14 summer pumping and the size of the plume, did you
15 do any further analysis on that?

16 MR. RICHMOND: I don't -- could you
17 clarify that?

18 MS. CROCKETT: Did you take current
19 pictures from the key point three from residential
20 homes that would be impacted by the plume's
21 visibility during the summer?

22 MS. GALE: We did not take any
23 additional photography.

24 MS. CROCKETT: Thank you. Burney
25 Resource Group is done.

1 HEARING OFFICER BOUILLON: I can't

2 imagine that leads to any redirect.

3 MR. ZISCHKE: It does not.

4 HEARING OFFICER BOUILLON: Do you care
5 to move that testimony into evidence at this time?

6 MR. ZISCHKE: Yes. The supplemental
7 visual resources testimony which is part of volume
8 one of our testimony on part two topics that was
9 previously identified as --

10 HEARING OFFICER BOUILLON: Number 66.

11 MR. ZISCHKE: -- exhibit 66.

12 HEARING OFFICER BOUILLON: Any
13 objection?

14 MS. CROCKETT: No objections.

15 MR. RATLIFF: No.

16 HEARING OFFICER BOUILLON: That will be
17 admitted. And you are excused.

18 Mr. Flores.

19 Whereupon,

20 DAVID FLORES

21 was called as a witness herein and after first
22 being duly sworn, was examined and testified as
23 follows:

24 //

25 //

1 DIRECT EXAMINATION

2 BY MR. RATLIFF:

3 Q Mr. Flores, you prepared the testimony
4 that has already been offered to the Committee as
5 part one of the final staff assessment, is that
6 correct?

7 A Yes, that's correct.

8 Q And you prepared today the testimony
9 that is in part two of the supplementary testimony
10 to the final staff assessment, is that correct?

11 A Yes, that's correct.

12 Q Is that testimony true and correct to
13 the best of your knowledge and belief?

14 A Yes, it is.

15 Q Do you have any changes to make in it at
16 this time?

17 A No changes.

18 MR. RATLIFF: The witness is available
19 for cross-examination.

20 HEARING OFFICER BOUILLON: Mr. Zischke.

21 MR. ZISCHKE: No questions.

22 HEARING OFFICER BOUILLON: Ms. Crockett.
23 Please limit yourself to the information in part
24 two of the FSA.

25 MS. CROCKETT: That's what I'm going to

1 do, thank you.

2 CROSS-EXAMINATION

3 BY MS. CROCKETT:

4 Q Mr. Flores, you said you reviewed the
5 simulation of the project from the Veder Road
6 residential area. You went out there personally
7 for the phase two testimony?

8 A Could you repeat that again? I'm sorry.

9 Q Your statement in the second paragraph
10 of page 123, visual resources, states that you
11 reviewed the simulation of the project from the
12 Veder Road residential area, which includes the
13 air cooled condenser that has been included in the
14 mitigation package, is that correct?

15 A Yes, that's correct.

16 Q You reviewed a simulation, you did not
17 revisit the site and personally view this site?

18 A No, I did not.

19 Q Thank you.

20 HEARING OFFICER BOUILLON: Mr. Ratliff,
21 would you care to move that testimony?

22 MR. RATLIFF: Yes, if I could ask the
23 Committee's indulgence, I failed to ask Mr. Flores
24 if he had, in fact, reviewed the environmental
25 documentation for the Hat Creek project, and I

1 wanted to ask him that if I may.

2 HEARING OFFICER BOUILLON: Certainly.

3 REDIRECT EXAMINATION

4 BY MR. RATLIFF:

5 Q Did you, in fact, review the
6 environmental documentation of the Hat Creek
7 project?

8 A Yes, I did.

9 Q Does it change any of your conclusions
10 today?

11 A No, it does not.

12 MR. RATLIFF: That's all, thank you.

13 HEARING OFFICER BOUILLON: Do you want
14 to ask him any questions about Hat Creek?

15 MS. CROCKETT: No, thank you.

16 HEARING OFFICER BOUILLON: Mr. Ratliff,
17 would you care to move that portion of part two of
18 the FSA into evidence?

19 MR. RATLIFF: Yes, please.

20 HEARING OFFICER BOUILLON: Any
21 objection? The visual resources section of part
22 two of the FSA is admitted. It's entitled, errata
23 to the testimony of David Flores. It will be
24 admitted.

25 That concludes the topic of visual

1 resources. It will be closed again.

2 I believe it's time for lunch.

3 MR. ZISCHKE: I had one clarifying
4 point, Mr. Bouillon. When I introduced and moved
5 in the testimony on noise, I moved in the
6 testimony of part two. There was also rebuttal
7 testimony that was filed on noise and I did not
8 mention that at the time I asked to have the noise
9 testimony accepted into evidence.

10 That's a separate document from our
11 three volume part two testimony which probably
12 needs a different number.

13 HEARING OFFICER BOUILLON: Okay.
14 Exhibit 69 will be a rebuttal testimony.

15 MR. ZISCHKE: Okay.

16 HEARING OFFICER BOUILLON: Ms. Crockett,
17 any objection to that?

18 MS. CROCKETT: No objections.

19 HEARING OFFICER BOUILLON: Mr. Ratliff,
20 any objection?

21 MR. RATLIFF: No.

22 HEARING OFFICER BOUILLON: That will be
23 admitted.

24 MR. ZISCHKE: Thank you.

25 HEARING OFFICER BOUILLON: Any other

1 housekeeping details?

2 MS. CROCKETT: I can say that our air
3 witness has arrived, so if we wanted to address
4 air quality right after lunch, due to the 3:00
5 schedule, the Burney Resource Group is very
6 comfortable with that.

7 HEARING OFFICER BOUILLON: It is my
8 intention to take up air quality and public health
9 as soon as we return from lunch at 1:00.

10 This hearing is adjourned until 1:00
11 p.m.

12 (Whereupon, at 11:57 a.m., the hearing
13 was adjourned, to reconvene at 1:00
14 p.m., this same day.)

15 --o0o--

16

17

18

19

20

21

22

23

24

25

1 AFTERNOON SESSION

2 1:10 p.m.

3 HEARING OFFICER BOUILLON: We'll call
4 this hearing back to order. We will now open the
5 topics of public health and air quality, which
6 will be heard together.

7 First we'll have the applicant's
8 witnesses.

9 Whereupon,

10 MARTIN McFADDEN, VALORIE THOMPSON and

11 MAI HATTAR

12 were called as witnesses herein and after first
13 being duly sworn, were examined and testified as
14 follows:

15 HEARING OFFICER BOUILLON: Would each of
16 you in turn please state your name and employment
17 for the record.

18 MR. McFADDEN: I'm Marty McFadden; I'm
19 the Vice President of Three Mountain Power.

20 DR. THOMPSON: I'm Valorie Thompson with
21 SRA.

22 MS. HATTAR: I'm Mai Hattar, Project
23 Manager with Bibb and Associates.

24 MR. ZISCHKE: Thank you. On my direct
25 testimony I'm going to ask some questions to the

1 whole panel and ask that you each respond to them.

2 I think that will save some time.

3 DIRECT EXAMINATION

4 BY MR. ZISCHKE:

5 Q Dr. Thompson, Mr. McFadden and Ms.
6 Hattar, were your qualifications submitted with
7 your testimony dated November 17th?

8 MR. McFADDEN: Yes, they were.

9 DR. THOMPSON: Yes, they were.

10 MS. HATTAR: Yes.

11 MR. ZISCHKE: Based on their submitted
12 qualifications I'd ask the Committee to accept
13 their qualifications to testify on the subject
14 matter of their testimony.

15 HEARING OFFICER BOUILLON: Yes.

16 MR. ZISCHKE: Dr. Thompson, I want to
17 discuss the testimony entitled, direct testimony
18 of Three Mountain Power air quality, dated
19 November 17th, and rebuttal testimony on air
20 quality, dated December 7, 2000.

21 Did you prepare that direct and rebuttal
22 testimony, along with Ms. Hattar and Mr. McFadden?

23 DR. THOMPSON: Yes, I did.

24 MR. ZISCHKE: And just to be clear, you
25 and they together prepared two parts of that

1 testimony. In the direct testimony, section Roman
2 numeral II-C-1-A, entitled BACT analysis for NOx,
3 and also in the rebuttal testimony section III-B,
4 entitled SCONOX is not an available and feasible
5 technology for the project, those are the two
6 joint portions of the testimony, is that correct?

7 DR. THOMPSON: That's correct.

8 MR. ZISCHKE: And when I ask further
9 questions I'll talk about the joint portions to
10 keep that clear.

11 Dr. Thompson, if asked to testify today
12 would your testimony be substantially the same?

13 DR. THOMPSON: Yes, it would.

14 MR. ZISCHKE: And is that testimony true
15 and correct to the best of your knowledge?

16 DR. THOMPSON: Yes, it is.

17 MR. ZISCHKE: Ms. Hattar and Mr.
18 McFadden, referring to the joint portions of the
19 testimony did you prepare those sections of the
20 direct rebuttal testimony together with Dr.
21 Thompson?

22 MR. McFADDEN: Yes, I did.

23 MS. HATTAR: Yes.

24 MR. ZISCHKE: Are those sections of the
25 joint portions of the testimony true and correct

1 to the best of each of your knowledge?

2 MR. McFADDEN: Yes, they are.

3 MS. HATTAR: Yes.

4 MR. ZISCHKE: And if asked to testify
5 today would your testimony be substantially the
6 same as those joint portions of the direct and
7 rebuttal testimony?

8 MS. HATTAR: Yes.

9 MR. McFADDEN: Yes, it would.

10 MR. ZISCHKE: Dr. Thompson, let me ask
11 you several short questions about the final
12 environmental impact report for what's been
13 referred to as the Hat Creek project. I'm
14 referring to the document that's entitled East
15 Side Aggregates Project, environmental impact
16 report.

17 Just to be clear, it includes a
18 reference to State Clearinghouse number
19 2000062079, and it's a one volume draft
20 environmental impact report and a two volume final
21 environmental impact report.

22 Did you review the analysis in that EIR
23 of the air quality impacts of the Hat Creek
24 project?

25 DR. THOMPSON: Yes, I did.

1 MR. ZISCHKE: Is there any information
2 in that EIR that causes you to change any of your
3 conclusions regarding the air quality or the
4 public health impacts of the Three Mountain Power
5 project?

6 DR. THOMPSON: No.

7 MR. ZISCHKE: Have you reviewed Three
8 Mountain Power's, this is a document filed with
9 our prehearing conference statement entitled,
10 Three Mountain Power's opposition to Burney
11 Resource Group's request for delay of scheduled
12 hearing dates for Three Mountain Power?

13 DR. THOMPSON: Yes, I have.

14 MR. ZISCHKE: On pages 3 through 6 of
15 that document, under heading B-1, there are a
16 series of factual statements under the heading,
17 the Hat Creek project, if approved, will not
18 generate emissions exceeding cumulative impact
19 thresholds, and will not result in any new or
20 substantially more severe significant cumulative
21 air quality impacts.

22 Do you agree with those factual
23 statements on pages 3 through 6 of that document?

24 DR. THOMPSON: Yes.

25 HEARING OFFICER BOUILLON: Mr. Zischke,

1 are you offering that document to be marked as an
2 exhibit?

3 MR. ZISCHKE: I was planning to, yes.

4 HEARING OFFICER BOUILLON: Okay.

5 MR. ZISCHKE: I would do that at the
6 conclusion as we have with other documents?

7 HEARING OFFICER BOUILLON: I'd like to
8 mark it now so that when you refer to it we all
9 know we're talking about the same exhibit number.

10 I'm going to mark as exhibit number 70 a
11 document entitled, Three Mountain Power's
12 opposition to Burney Resource Group's request for
13 delay of scheduled hearing dates for Three
14 Mountain Power. Actually at the top of that it
15 says attachment A, but the attachment, just that
16 portion of that document will be marked as exhibit
17 number 70.

18 MS. CROCKETT: I would question what --
19 I didn't quite catch what the actual attachment A
20 is. Is it the Hat Creek EIR?

21 HEARING OFFICER BOUILLON: No, no, I'm
22 sorry. Their opposition is marked on its face
23 attachment A. It was attachment A to their
24 prehearing statement.

25 MS. CROCKETT: Thank you.

1 MR. ZISCHKE: Two more questions for Dr.
2 Thompson.

3 Based on your review of the Hat Creek
4 EIR, as well as your testimony on the Three
5 Mountain Power project, in your opinion does the
6 information in the Hat Creek EIR indicate any new
7 significant cumulative impact of the Three
8 Mountain Power project on air quality or public
9 health that will occur if the Hat Creek project is
10 approved?

11 DR. THOMPSON: No, it does not.

12 MR. ZISCHKE: And a somewhat similar,
13 but different question, also based on your review
14 of the Hat Creek EIR, as well as your testimony on
15 the Three Mountain Power project, in your opinion
16 does the information in the Hat Creek EIR indicate
17 that any cumulative impact of the Three Mountain
18 Power project on air quality or public health will
19 be substantially more severe if the Hat Creek
20 project is approved?

21 DR. THOMPSON: No.

22 MR. ZISCHKE: Thank you. These
23 witnesses are available for cross-examination.

24 HEARING OFFICER BOUILLON: I understand
25 the staff has no cross-examination, is that

1 correct?

2 MR. RATLIFF: That's correct.

3 HEARING OFFICER BOUILLON: Ms. Crockett.

4 CROSS-EXAMINATION

5 BY MS. CROCKETT:

6 Q Dr. Thompson, referring to the Hat Creek
7 project, are you aware of the document that Dr.
8 Fox states in there about the CARB, the recent
9 CARB letter on diesel fumes being a toxic
10 emission?

11 DR. THOMPSON: Is this part of Dr. Fox's
12 comments?

13 MS. CROCKETT: Yes, on the Hat Creek
14 project.

15 DR. THOMPSON: I have reviewed Dr. Fox's
16 comments on the EIR.

17 MS. CROCKETT: And you are aware of
18 them?

19 DR. THOMPSON: Yes, I am.

20 MS. CROCKETT: Would you feel that 560
21 roundtrips per day with the associated diesel
22 exhaust would be a public health impact?

23 DR. THOMPSON: The only thing that I can
24 comment on is the information that's presented in
25 the EIR. I have not done a separate analysis on

1 the diesel emissions from the project.

2 So I can just comment on the results in
3 the EIR, which show that it's not significant.

4 MS. CROCKETT: Did the evaluation in the
5 EIR do the calculations on the 560 diesel truck
6 roundtrips per day that have been permitted in the
7 step one of two steps of Shasta County?

8 DR. THOMPSON: I am not sure about that.
9 I'd have to look back at that.

10 MS. CROCKETT: Do you have any
11 background in mobile source emissions?

12 DR. THOMPSON: Yes.

13 MS. CROCKETT: Could you please tell me
14 what they are?

15 DR. THOMPSON: I've done a variety of
16 studies on mobile source emissions throughout the
17 State of California, including CL hot spots
18 modeling.

19 MS. CROCKETT: Are you aware in the Hat
20 Creek project that they requested a zoning
21 amendment?

22 DR. THOMPSON: No.

23 MS. CROCKETT: Thank you. Those would
24 be the questions currently at this point.

25 HEARING OFFICER BOUILLON: For all three

1 of them?

2 MS. CROCKETT: On the Hat Creek project,
3 yes.

4 HEARING OFFICER BOUILLON: Oh, go ahead.
5 Well, they're offered for their direct testimony
6 on air quality, and --

7 MS. CROCKETT: And public health --

8 HEARING OFFICER BOUILLON: -- public
9 health in general.

10 MS. CROCKETT: Okay.

11 HEARING OFFICER BOUILLON: Isn't that
12 right, Mr. Zischke?

13 MR. ZISCHKE: That's correct.

14 HEARING OFFICER BOUILLON: And on direct
15 he had them summarize the Hat Creek project
16 because that's not included in their testimony,
17 but --

18 MS. CROCKETT: Thank you.

19 HEARING OFFICER BOUILLON: -- they're
20 offered for cross-examination on all topics of
21 their filed testimony.

22 MS. CROCKETT: Dr. Thompson, you
23 reviewed the questions that were sent in by the
24 Burney Resource Group on public health?

25 DR. THOMPSON: Yes, I did.

1 MS. CROCKETT: Did you see on number 4
2 that the Burney Resource Group quoted a letter
3 submitted by Dr. Fox through CURE that apparently
4 was a letter sent to Lizanne Reynolds of Adams,
5 Broadwell and Cardozo with TMP's calculated acute
6 hazard index for the facility.

7 Is it correct, is it my understanding
8 that TMP did the calculations that Dr. Fox was
9 referring to?

10 DR. THOMPSON: I'm not exactly sure
11 which calculations you're referring to.

12 MS. CROCKETT: She was referring to a
13 letter that stated, it was dated January 21, 2000,
14 from Lisa Cottle to Lizanne Reynolds, and it had
15 to do with the acute hazard index of the Three
16 Mountain power Project. I have the letter here.
17 Would you like to take a look at it?

18 DR. THOMPSON: Yes, that might be
19 helpful.

20 HEARING OFFICER BOUILLON: Ms. Crockett,
21 I'm not sure if you understand the distinction,
22 but are you using that document to refresh the
23 witness' recollection, or would you like to have
24 it marked as an exhibit?

25 MS. CROCKETT: I could have it marked as

1 an exhibit. I was initially using it to refresh
2 her memory.

3 MR. ZISCHKE: I'd like to see a copy,
4 too, if I may.

5 HEARING OFFICER BOUILLON: Let me mark
6 it first, Mr. Zischke.

7 For the record I've been handed a letter
8 from Adams, Broadwell, Joseph and Cardozo dated
9 February 7, 2000, addressed to Mr Buell at the
10 California Energy Commission and signed by Mr.
11 Wolfe, attorney for CURE.

12 MR. RATLIFF: What was the date, again?

13 HEARING OFFICER BOUILLON: The topic of
14 it is a revised health risk assessment.

15 MR. RATLIFF: And the date?

16 HEARING OFFICER BOUILLON: February 7,
17 2000. And that will be identified as exhibit 71.

18 DR. THOMPSON: To answer your question,
19 yes, I'm familiar with the letter.

20 MS. CROCKETT: Okay, and --

21 HEARING OFFICER BOUILLON: If you'll
22 just pause for a moment while Mr. Zischke looks at
23 the letter. And, Mr. Ratliff, do you need to see
24 it?

25 MR. RATLIFF: I would like to, yes.

1 MS. CROCKETT: And before it's
2 resubmitted may I use it for reference?

3 HEARING OFFICER BOUILLON: Excuse me?

4 MS. CROCKETT: Before it's resubmitted
5 may I use it for reference?

6 HEARING OFFICER BOUILLON: Oh,
7 absolutely.

8 MS. CROCKETT: Thank you.

9 (Pause.)

10 MR. ZISCHKE: If I could just comment.
11 We don't object to the admission of the letter.
12 It is a letter from a lawfirm reciting some
13 guidelines. I think the guidelines speak for
14 themselves, and I have not compared it to
15 determine if that letter sets them forth, but I
16 don't have a reason to know that it doesn't.

17 That was from a lawfirm --

18 HEARING OFFICER BOUILLON: In the first
19 place it hasn't been offered yet.

20 MR. ZISCHKE: Correct?

21 HEARING OFFICER BOUILLON: It hasn't
22 been offered into evidence yet.

23 MR. ZISCHKE: Excuse me, I thought it
24 had been.

25 HEARING OFFICER BOUILLON: No. It has

1 been marked as an exhibit so we'll know what we're
2 talking about, but that's it.

3 MS. CROCKETT: Are we ready to proceed?

4 HEARING OFFICER BOUILLON: Yes.

5 BY MS. CROCKETT:

6 Q Dr. Thompson, did you do those health
7 risk analysis -- or excuse me, acute hazard index
8 for the project?

9 DR. THOMPSON: I calculated the acute
10 hazard index.

11 MS. CROCKETT: And was Dr. Fox correct
12 in her indication from the letter that it was
13 0.5624?

14 DR. THOMPSON: In one of the
15 calculations that I did, because you understand
16 we've done several different calculations --

17 MS. CROCKETT: Correct.

18 DR. THOMPSON: -- the result was .5624
19 for an acute hazard index.

20 MS. CROCKETT: Okay, as stated in this
21 letter that under the CAPCOA risk assessment
22 guidelines, anytime the total acute hazard index
23 for respiratory affects should include
24 consideration of background concentrations of
25 criteria pollutants of the total hazard index of

1 the facility exceeds 0.5, is that correct?

2 DR. THOMPSON: I'm aware of that
3 provision in the CAPCOA guidelines, however, I
4 agree with the staff's response to your question
5 regarding the guidelines. In that even though
6 there is a statement in the CAPCOA guidelines, the
7 1993 version of those guidelines, to add the
8 hazard index associated with background to the
9 facility's hazard index, in practice that approach
10 is not used in the State of California to
11 determine significance. Or to require a facility
12 to notify the public of their risk. Or to require
13 risk reduction measures.

14 And staff, I believe in their response
15 to your questions, correctly pointed that out.

16 MS. CROCKETT: Actually the staff said
17 that they were guidelines and that they had not
18 done a hazard index for the facility. And that it
19 appears that they were relying on your estimated
20 acute index value of 0.0385.

21 Am I interpreting, jumping from
22 paragraph to paragraph, correctly?

23 DR. THOMPSON: No, I believe that staff,
24 in responding to your question regarding the
25 provision in the CAPCOA guidelines indicated that

1 that portion of the guidelines was, quote, "a dead
2 letter" unquote provision in the guidelines.

3 And that, in fact, it is not used in
4 practice in the State of California.

5 MS. CROCKETT: But it is still on the
6 books?

7 DR. THOMPSON: It is in the 1993
8 guidelines.

9 MS. CROCKETT: How did you arrive with
10 the acute hazard index for the facility in one of
11 your tests at 0.5624 and come up with an overall
12 acute estimated acute index value of 0.0385?

13 DR. THOMPSON: I believe that when staff
14 was looking at the acute hazard index of 0.0385
15 that they're looking at the original analysis that
16 was done in the AFC.

17 We submitted our AFC on March 1, 1999,
18 and subsequent to that I believe the date is March
19 9, 1999. The Office of Environmental Health
20 Hazard Assessment came out with some proposed new
21 acute reference exposure levels.

22 And in response to a question that was
23 asked by CURE, we recalculated the hazard index.
24 And so the hazard index of .5624 is actually based
25 on the proposed new reference exposure levels.

1 I believe that the two compounds that
2 changed were acrolein and formaldehyde.

3 MS. CROCKETT: When you did this new
4 evaluation did you use a screening program in
5 order to do this, to calculate?

6 DR. THOMPSON: I calculated the hazard
7 index with the refined model ISCST3, and also with
8 the screening model.

9 MS. CROCKETT: Would you clarify what
10 refining model means?

11 DR. THOMPSON: Well, a refined model is
12 a model that's used in air dispersion modeling to
13 account for things such as terrain effects in the
14 area. It also accounts for a multitude of
15 sources, more than one source, as opposed to just
16 one point or area or volume source.

17 A screening model is generally a more
18 conservative approach, and you can only model one
19 source at a time.

20 MS. CROCKETT: When you were using the
21 refined screening model, did that indicate that
22 you had to input local data?

23 DR. THOMPSON: I'm sorry, if you're
24 talking about the refined model or the screening
25 model?

1 MS. CROCKETT: The refined model or the
2 screening -- either one. On either one of these
3 runs was local data an input?

4 DR. THOMPSON: Okay, when you're looking
5 at the result of .5624, that result is based on
6 the use of the ISCST3 refined model with Brush
7 Mountain meteorological data from 1997 and 1998.

8 MS. CROCKETT: Do you accept those
9 results using the Brush Mountain data?

10 DR. THOMPSON: Do I accept the results?

11 MS. CROCKETT: Yes.

12 DR. THOMPSON: I believe that the
13 results may be representative of a worst case.

14 MS. CROCKETT: Are you aware of the EPA
15 guidance for modeling on air dispersion modeling?

16 DR. THOMPSON: Yes.

17 MS. CROCKETT: Could you please describe
18 what they are?

19 DR. THOMPSON: Could I please describe
20 the guidelines? I'm not sure --

21 HEARING OFFICER BOUILLON: I'm afraid,
22 Ms. Crockett, you're going to have to be more
23 specific than that.

24 MS. CROCKETT: Excuse me, the med data,
25 for med data guidelines.

1 DR. THOMPSON: Okay. Well, initially
2 what the guidelines state is that you can use a
3 screening approach to evaluate a facility's
4 impacts.

5 And if the facility demonstrates that
6 there's no exceedence of a national ambient air
7 quality standard, and that the PSD increment is
8 not consumed, then you don't have to go any
9 further to do a further refined analysis.

10 If, however, you do either exceed the
11 national ambient air quality standard, or consume
12 the PSD increment, then you should go to a more
13 refined modeling approach.

14 MS. CROCKETT: And then you indicated
15 you went to the refined modeling approach?

16 DR. THOMPSON: Well, actually in this
17 case we kind of went backwards. We started out
18 using the Brush Mountain meteorological data, and
19 because of questions that were raised by the
20 Burney Resource Group about the data, we went back
21 and used a default meteorological data set, which
22 essentially represents a worst case meteorological
23 data set.

24 That will generally give you more
25 conservative results, and really represents what

1 the highest possible impact is.

2 And I believe that staff discussed that
3 in their testimony on air quality.

4 MS. CROCKETT: Just one moment. Okay,
5 continuing on. One other question on public
6 health. The hazard index for public health under
7 the PM10 levels was 1.82. And this was presented
8 by staff in their hazard index, in FSA part two.

9 Currently I would ask if the 25 percent
10 offsets for the project's PM10 emissions are not
11 achieved by the voluntary wood stove program
12 within the community of Burney and Johnson Park,
13 would the emissions from the project, in addition
14 to current levels of PM10 present in the basin,
15 present a health hazard under either state or
16 federal LORS?

17 DR. THOMPSON: Well, if you're asking me
18 to speculate it is Three Mountain Power's intent
19 to obtain 25 percent of the emission offsets for
20 PM10 from the wood stove replacement program. And
21 so they are already working towards doing that.

22 In my opinion the PM10 impacts from the
23 project will be insignificant. They won't
24 increase the ambient background PM10
25 concentrations by a significant amount.

1 MS. CROCKETT: My question was, though,
2 if it was not achieved, if the 25 percent of
3 offsets were not achieved, would there be a health
4 hazard?

5 MR. ZISCHKE: I think the witness has
6 answered that question by indicating she wasn't
7 going to speculate.

8 MS. CROCKETT: Actually the witness has
9 not answered that question in my opinion.

10 HEARING OFFICER BOUILLON: You talk to
11 me.

12 MS. CROCKETT: It is my belief that my
13 question was if the 25 percent offsets were not
14 achieved, just not achieved, clearly not a
15 supposition, but if they're not achieved would
16 there be a health hazard.

17 HEARING OFFICER BOUILLON: I did
18 understand that to be the question. And I believe
19 Mr. Zischke objected and said that would call for
20 speculation on her part.

21 Ms. Thompson, is that correct?

22 DR. THOMPSON: Yes, that's correct.

23 MS. CROCKETT: So, may I clarify --

24 HEARING OFFICER BOUILLON: I'm not going
25 to let her speculate.

1 MS. CROCKETT: Correct.

2 HEARING OFFICER BOUILLON: Speculate is
3 like guessing.

4 MS. CROCKETT: Right.

5 MR. RATLIFF: Commissioner, I hate to
6 butt in, but I'm a little --

7 (Parties speaking simultaneously.)

8 PRESIDING MEMBER KEESE: -- although she
9 answered it.

10 MR. RATLIFF: I thought she answered the
11 question, actually, and I thought it wasn't about
12 speculation.

13 PRESIDING MEMBER KEESE: It seems to me
14 she answered and said there is no impact anyway,
15 period. That's what I heard.

16 HEARING OFFICER BOUILLON: And
17 certainly, Ms. Crockett, you're going to be free
18 to argue to the contrary in your briefs.

19 MS. CROCKETT: Thank you.

20 HEARING OFFICER BOUILLON: Based on the
21 evidence.

22 MS. CROCKETT: Okay, then we'll continue
23 with that.

24 Thank you on this panel. Burney
25 Resource Group is done.

1 HEARING OFFICER BOUILLON: Mr. Zischke,
2 do you have redirect?

3 MR. ZISCHKE: Just one question for Dr.
4 Thompson.

5 REDIRECT EXAMINATION

6 BY MR. ZISCHKE:

7 Q With respect to the CAPCOA guidelines
8 that were mentioned, did you independently verify
9 the practice with air districts in California?

10 A Yes, I did. I contacted approximately
11 eight of the largest air districts in California.
12 Everyone from the South Coast Air Quality
13 Management District to Shasta County, to Santa
14 Barbara County, to ask them if they did, in fact,
15 determine the significance of a facility's acute
16 risk by requiring the facility to add in the
17 hazard index associated with background.

18 And all of them responded that they did
19 not require that.

20 Q Thank you.

21 HEARING OFFICER BOUILLON: Ms. Crockett,
22 does that suggest anything additional?

23 MS. CROCKETT: I actually was thinking
24 about something and I totally missed the comment.
25 So obviously, I can't ask a question.

1 (Laughter.)

2 MS. CROCKETT: Thank you.

3 HEARING OFFICER BOUILLON: All right,
4 Mr. Zischke, it's my understanding that the 12/7
5 rebuttal testimony, is that part of what has been
6 marked as exhibit 69?

7 MR. ZISCHKE: Yes.

8 HEARING OFFICER BOUILLON: And the 11/17
9 is exhibit 66?

10 MR. ZISCHKE: That's correct.

11 HEARING OFFICER BOUILLON: And you'd
12 like to move those --

13 MR. ZISCHKE: Both for air and public
14 health.

15 HEARING OFFICER BOUILLON: -- Mr.
16 McFadden, Ms. Thompson and Ms. Hattar's testimony
17 on these two topics into evidence?

18 MR. ZISCHKE: That's correct. I would
19 also like to move into evidence the document we
20 mentioned earlier, which has been marked as
21 exhibit 70, the opposition to the request for
22 delay.

23 HEARING OFFICER BOUILLON: I want to
24 deal with that separately.

25 MR. ZISCHKE: Okay.

1 HEARING OFFICER BOUILLON: Do you have
2 any objection to their testimony?

3 MS. CROCKETT: I have no objections to
4 the testimony.

5 HEARING OFFICER BOUILLON: Mr. Ratliff?

6 MR. RATLIFF: No.

7 HEARING OFFICER BOUILLON: All right.
8 Those portions of exhibits 66 and 69 will be moved
9 into evidence.

10 MR. ZISCHKE: Right, that's the direct
11 and rebuttal, thank you.

12 HEARING OFFICER BOUILLON: Now we'll
13 take up the matter of exhibit 70, which is the
14 Three Mountain Power's opposition to your request
15 for delay of the scheduled hearing.

16 Do you have any objections to the
17 introduction of that document?

18 MS. CROCKETT: No.

19 HEARING OFFICER BOUILLON: Mr. Ratliff?

20 MR. RATLIFF: No.

21 HEARING OFFICER BOUILLON: It will be
22 admitted.

23 In addition we marked as exhibit 71 a
24 letter from CURE, and, Mr. Zischke, I understand
25 you do have an objection to that?

1 MR. ZISCHKE: Actually, I don't object
2 to the letter being admitted, but wanted to
3 clarify that the letter is from a lawfirm
4 summarizing the CAPCOA guideline. I think the
5 CAPCOA guideline speaks for itself, and I have not
6 compared the two to determine they are consistent.

7 And, of course, we have settled with the
8 party that was represented by that lawfirm and
9 agreed that all of the issues have been taken care
10 of with them.

11 But with those notations I don't object
12 to it being admitted.

13 HEARING OFFICER BOUILLON: You do not?

14 MR. ZISCHKE: I do not.

15 HEARING OFFICER BOUILLON: Mr. Ratliff?

16 MR. RATLIFF: No.

17 HEARING OFFICER BOUILLON: Do you wish
18 to offer that in evidence?

19 MS. CROCKETT: Yes, I do.

20 HEARING OFFICER BOUILLON: I'll have to
21 have it back from you then.

22 MS. CROCKETT: I knew you were going to
23 ask for it.

24 HEARING OFFICER BOUILLON: But I'll tell
25 you what, I will give you an opportunity to make

1 yourself a copy first, and you can submit it to me
2 later today.

3 MS. CROCKETT: Thank you.

4 HEARING OFFICER BOUILLON: That will be
5 admitted.

6 I believe that concludes this panel. We
7 can turn to the staff's witnesses. And I would
8 like to take Mr. Ngo and Mr. Kussow, who I believe
9 the staff is sponsoring together as a panel.
10 Whereupon,

11 TUAN NGO and MICHAEL KUSSOW
12 were called as witnesses herein and after first
13 being duly sworn, were examined and testified as
14 follows:

15 MR. RATLIFF: I'll start with Mr.
16 Kussow.

17 DIRECT EXAMINATION

18 BY MR. RATLIFF:

19 Q Mr. Kussow, what is your position with
20 the Air District?

21 A I'm the Air Pollution Control Officer
22 for Shasta County.

23 Q And did the Shasta County Air Pollution
24 Control District prepare the final determination
25 of compliance for this project?

1 A Yes, but our title is the Shasta County
2 Air Quality Management District. I don't know if
3 there's any difference between an air pollution
4 control district, but --

5 Q Okay, thank you. I'm corrected. Is the
6 final determination of compliance true and correct
7 to the best of your knowledge and belief?

8 A Yes, it is.

9 Q Do you have any changes to make in it at
10 this time?

11 A No, I do not.

12 BY MR. RATLIFF:

13 Q For Mr. Ngo. You filed the staff
14 testimony and FSA part two, is that correct?

15 A Yes.

16 Q And subsequent to that you filed
17 supplementary testimony, rebuttal testimony dated
18 December 7, 2000, is that correct?

19 A That's right.

20 Q You also filed an errata to that
21 testimony which the date I have on mine is
22 December 15, 2000, is that correct?

23 A The errata is supposed to be dated
24 December 7 --

25 Q It's also December 7th, okay.

1 A Right.

2 Q So that date that I have on mine is
3 wrong. Those are the three pieces of testimony
4 that you're sponsoring today, is that correct?

5 A Yes. But I do also receive a call from
6 the District where he request some more change to
7 the conditions of certification.

8 Q You have additional changes to the
9 conditions of certification?

10 MR. NGO: And so I want to make, I
11 guess, oral errata at this time if possible.

12 MR. RATLIFF: With the Committee's
13 permission we will provide additional language
14 concerning the conditions after the hearing, if
15 that is acceptable.

16 Do you want --

17 HEARING OFFICER BOUILLON: What I would
18 like is a summary, a fairly complete summary on
19 the record so that the Burney Resource Group has
20 an opportunity to cross-examine on the content of
21 that.

22 MR. RATLIFF: Yes.

23 HEARING OFFICER BOUILLON: I would then
24 like it in hard copy form for possible inclusion
25 in the proposed decision.

1 But if we're not going to have any
2 testimony about what that condition is, it's
3 impossible for anyone to cross-examine on it.

4 MS. CROCKETT: Thank you.

5 MR. RATLIFF: Are you talking about
6 anything that goes beyond the errata, the December
7 7th errata with the changes in conditions that are
8 in the December 7th errata?

9 MR. NGO: There was some minor change
10 that affected the operation of the District. I
11 guess procedure-wise.

12 MR. RATLIFF: Okay.

13 MR. NGO: And, it relate to some of the
14 condition that we introduce in the errata.

15 MR. RATLIFF: Yes.

16 MR. NGO: So, pretty minor. There were
17 seven of them, but pretty minor.

18 MR. RATLIFF: Seven changes?

19 MR. NGO: Seven changes, yes.

20 MR. RATLIFF: Do you want, at this time,
21 to go through those changes?

22 MS. CROCKETT: Excuse me, Burney
23 Resource Group has not received that errata, or is
24 it on the back table?

25 MR. RATLIFF: The errata that we're

1 talking about is --

2 MS. CROCKETT: On the back of the
3 supplemental, okay.

4 MR. RATLIFF: -- this is a one page
5 errata.

6 MS. CROCKETT: Okay, I think I did see
7 that.

8 MR. RATLIFF: That I believe was proof
9 of service December 7th. No? Okay.

10 MS. CROCKETT: Is there going to be
11 information introduced that I've not had access
12 to?

13 MR. RATLIFF: I believe that I am
14 confused, actually. So, let me start over here
15 and try to clarify this.

16 The errata that we filed were changes to
17 the air quality conditions on December 7th, is
18 that correct?

19 MR. NGO: Correct.

20 MR. RATLIFF: And the results of a one
21 page, additional page of errata to those
22 conditions, which has not been proof of serviced,
23 which I believe you do not have, is that correct,
24 Rick? And that was what I was calling the errata,
25 because I was confused.

1 MS. CROCKETT: Okay.

2 MR. RATLIFF: So, I think we need to
3 make that available to you. I think those are the
4 changes -- that's a hard copy of the changes that
5 Mr. Ngo is talking about right now.

6 And we can provide that. I don't have
7 multiple copies, but I have my own copy.

8 MS. CROCKETT: Can we not discuss this
9 until BRG has had a chance to review the
10 information?

11 HEARING OFFICER BOUILLON: I'm not sure
12 what it is we're talking about.

13 MR. RATLIFF: Right. I guess it hasn't
14 been circulated.

15 HEARING OFFICER BOUILLON: I have a
16 rebuttal by Mr. Ngo what has a date on it at the
17 bottom of the page, and it's some five pages long,
18 dated December 7, 2000.

19 As far as I know, and that's called
20 rebuttal testimony.

21 MS. CROCKETT: The rebuttal to the
22 testimony by Mr. Ngo that BRG has was the date,
23 yes, okay, rebuttal was sent here, and it is dated
24 December 7th.

25 HEARING OFFICER BOUILLON: Okay, beyond

1 that I don't believe I have anything.

2 MR. RATLIFF: That's right, we have not
3 put out the one-page errata which, I mean, the
4 changes appear to be exceedingly minor. They're,
5 in some cases, not even substantive changes, it
6 would appear.

7 But, maybe we --

8 PRESIDING MEMBER KEESE: So you're
9 referring to these as editorial changes, but I
10 think the parties still have to --

11 MR. RATLIFF: Yes.

12 PRESIDING MEMBER KEESE: -- they have to
13 see what you're talking about here.

14 MR. RATLIFF: Of course. And I don't
15 know how you want us to accomplish that, but we
16 can either have Mr. Ngo go through them right now
17 and describe what they are, the changes that we're
18 talking about. Or we can do something else. It's
19 really the Committee's choice.

20 HEARING OFFICER BOUILLON: Are they in
21 writing at the --

22 MR. RATLIFF: Yes.

23 HEARING OFFICER BOUILLON: There's a
24 Xerox down the hall if we have to make some
25 copies.

1 MR. RATLIFF: Okay.

2 MS. CROCKETT: I think that would be --
3 I understand they might be changes in conditions
4 of certification? Is that what Mr. --

5 HEARING OFFICER BOUILLON: Well, let's
6 just wait and see what he comes back with.

7 MS. CROCKETT: Okay.

8 HEARING OFFICER BOUILLON: Can you pass
9 that just for the moment and continue?

10 MR. RATLIFF: Yes.

11 With those additional changes in the
12 conditions of certification is your testimony true
13 and correct to the best of your knowledge and
14 belief?

15 MR. NGO: Yes.

16 MR. RATLIFF: Have you read the Hat
17 Creek environmental documents that have been
18 referenced earlier today?

19 MR. NGO: Yes, I did.

20 MR. RATLIFF: Does the information in
21 those documents change your conclusions in your
22 testimony in any way?

23 MR. NGO: I really don't think so.
24 Because of maybe a few reason. First of all the
25 Hat Creek facility is right outside of the six

1 mile radius that I normally consider included in
2 the cumulative impact analysis.

3 The second item that the reason that I
4 didn't discuss this or include it in the
5 cumulative impact analysis because is relative
6 minor sources. According to the information had
7 been provided to me by the District, the Hat Creek
8 facility will have approximately 1.4 ton per year
9 of PM10. And approximately 4 ton per year of NOx
10 emission.

11 Consider those source, consider the
12 emission, the source is relative minor, and it
13 wouldn't affect the cumulative impact analysis.

14 MR. RATLIFF: Okay. Thank you. If I
15 could ask Mr. Kussow, have you also read the Hat
16 Creek environmental documents as they pertain to
17 air quality?

18 MR. KUSSOW: Yes, I have.

19 MR. RATLIFF: And does that change the
20 conclusions in the FDOC in any way?

21 MR. KUSSOW: No, it does not.

22 MR. RATLIFF: If I could ask Mr. Ngo,
23 could you summarize in no more than one minute the
24 conclusions of your air quality analysis.

25 MR. NGO: I'm going to try to in one

1 minute. The Burney area is currently classified
2 at -- I'm sorry, the Burney area is currently
3 classified as nonattainment for the state one hour
4 ozone in the 24 hour PM10 because of -- the
5 project, pretty much, have to provide some offset
6 from NOx and VOC -- NOx meaning nitrogen oxide and
7 VOC mean organic compounds emission -- reduction
8 credit so that they use that to offset the ozone
9 potential that could be contributed by the project
10 in the regional problem.

11 The applicant also proposed to pave some
12 road, a length to be determined, by the road to be
13 determined at a later date. And those will
14 mitigate some PM10 emission in the summertime.

15 In addition to that, staff recommend the
16 applicant to set aside a sufficient amount of fund
17 to reimburse the willing residents of Burney area
18 to change over the wood stove, their current wood
19 stove unit with a certified EPA unit.

20 Staff believe that this program will
21 generate all necessary PM10 and the precursor that
22 are needed to mitigate the project, direct and
23 secondary PM10 emission impact to the level of
24 less than significant.

25 The Burney community have some concern

1 due to the lack of current ambient air quality
2 data. Staff also go one further step to recommend
3 the applicant and the applicant have also agree to
4 install and operate a five-year monitoring program
5 in the Burney area to measure the ambient ozone
6 and PM10. Two of which will be prior to
7 operation, and three of which will be immediately
8 after that.

9 Staff have reviewed the project and have
10 determined that project emission impact to the
11 area have been mitigated to the level of less than
12 significant.

13 MR. RATLIFF: Thank you. The witnesses
14 are available for cross-examination.

15 HEARING OFFICER BOUILLON: Before we
16 begin, there is one other witness on public
17 health, a Dr. Obed Odomelam --

18 MR. RATLIFF: Odomelam, yes.

19 HEARING OFFICER BOUILLON: I'm not sure
20 if I can spell that right, but -- cross-examined
21 by the Burney Resource Group. But as I understand
22 it, there was a stipulation between the parties
23 that they would submit written questions to him,
24 and they would be answered in writing, is that
25 correct, Mr. Ratliff?

1 MR. RATLIFF: I think it was a tacit
2 stipulation; we had no formal stipulation, is that
3 correct, Marci?

4 MS. CROCKETT: We agreed that I would
5 submit the written questions, and, yes, it was
6 more of a tacit agreement.

7 HEARING OFFICER BOUILLON: I have in
8 front of me a document entitled, public health,
9 responses to Burney Resource Group's cross-
10 examination questions, testimony of Dr. Obed
11 Odomelam. And I'm going to mark that exhibit 72.
12 And I understand that will be admitted without
13 objection, is that correct, Mr. Zischke?

14 MR. ZISCHKE: That's correct.

15 HEARING OFFICER BOUILLON: Ms. Crockett?

16 MS. CROCKETT: No objection.

17 HEARING OFFICER BOUILLON: Mr. Ratliff?

18 MR. RATLIFF: Yes.

19 HEARING OFFICER BOUILLON: I also have
20 in front of me the final determination of
21 compliance issued by the Shasta County Department
22 of Resource Management, Air Quality Management
23 District.

24 The one I have is dated October 10,
25 2000, is that correct?

1 MR. KUSSOW: Yes.

2 HEARING OFFICER BOUILLON: Thank you,
3 Mr. Kussow. I'll mark that as exhibit number 72.
4 I don't believe it's been previously marked, has
5 it?

6 MR. RATLIFF: I'm sorry, which one of
7 those is --

8 HEARING OFFICER BOUILLON: The FDOC has
9 not been previously marked?

10 MR. RATLIFF: I do not believe it has
11 been.

12 HEARING OFFICER BOUILLON: All right,
13 that will be marked exhibit 72.

14 MR. RATLIFF: No, you just -- 73, I
15 think.

16 HEARING OFFICER BOUILLON: You're right,
17 73, I'm sorry. I hadn't written the 2 yet, so
18 we're all right.

19 All right. As I understand it, the
20 applicant has no questions?

21 MR. ZISCHKE: We have several questions
22 for Mr. Kussow.

23 HEARING OFFICER BOUILLON: Go ahead.

24 //

25 //

1 CROSS-EXAMINATION

2 BY MR. ZISCHKE:

3 Q Mr. Kussow, good afternoon. Several
4 questions on topics raised in the testimony.

5 In your opinion, are the ambient air
6 quality data used in Three Mountain Power's
7 analysis representative of current conditions in
8 Burney?

9 A Yes, they are. They're a conservative
10 estimation.

11 Q So would you agree with staff's
12 conclusion that this data reasonably depicts
13 current conditions in Burney?

14 A Yes.

15 Q In the testimony by Mr. Gilbert and the
16 other Goal Line Technologies witnesses, they refer
17 on page 3 to an Air Resources Board study, and I
18 think in their errata they gave the name of a
19 study final report prepared by Sonoma Technology
20 in March 1997 that found nitric acid and hydroxide
21 radicals in sufficient quantities to react with
22 ammonia and form secondary PM10.

23 Are you familiar with that study?

24 A Yes, I am.

25 Q Does that study cover the Burney area?

1 A No, it does not. That was a special
2 study that Shasta County initiated to cover the
3 Sacramento Valley floor area under 1000 feet in
4 elevation.

5 Q So it's not based on measurements taken
6 in the Burney area?

7 A No.

8 Q In your opinion does this study
9 demonstrate high levels of nitric acid and
10 hydroxide radicals in the Burney area?

11 A No, it does not.

12 Q In their bid to Three Mountain Power for
13 SCONox technology, ABB Alston Power included a
14 provision that requires the developer to obtain a
15 soft landing in their permit provision in order to
16 use a SCONox technology.

17 I'm referring to attachment 21 to our
18 direct testimony, which was that bid on page 4-8.
19 The condition reads: Buyer shall obtain a soft
20 landing or other permit condition that will allow
21 operation of an alternate emissions control system
22 in the event that the equipment fails to
23 demonstrate performance as warranted in article
24 8."

25 Is that type of soft landing provision

1 acceptable to the Shasta County Air Quality
2 Management District?

3 A No, it is not.

4 Q A couple of questions on emission
5 reduction credits or ERCs. ERCs are imposed as
6 conditions on this project to satisfy the County
7 general plan, is that right?

8 A That's correct.

9 Q And they are not imposed as a condition
10 under the PSD regulations, is that also correct?

11 A No, PSD regulations do not require
12 offsets.

13 Q Were the Sierra Pacific ERCs properly
14 banked in your opinion?

15 A Yes, they were.

16 Q One question on Hat Creek. Is there a
17 completed application on file with the Air
18 District for an authority to construct for the Hat
19 Creek project?

20 A There is not a complete application at
21 this time. There is an initial application which
22 we have deemed incomplete.

23 Q In your opinion, based on the final --

24 HEARING OFFICER BOUILLON: Excuse me.

25 Did you say it has been deemed incomplete?

1 MR. KUSSOW: Deemed incomplete by our
2 office, yes.

3 HEARING OFFICER BOUILLON: Thank you.
4 BY MR. ZISCHKE:

5 Q In your opinion, based on the final
6 determination of compliance, the staff assessment,
7 and our studies and testimony, based on that
8 record before the Committee, is there an adequate
9 analysis of air quality impacts, in your opinion?

10 A Can you repeat that question one more
11 time?

12 Q In your opinion, based on the final
13 determination of compliance, the staff's
14 assessment, and Three Mountain Power's studies and
15 testimony, based on that record before the
16 Committee, is there an adequate analysis of the
17 air quality impacts of the Three Mountain Power
18 project?

19 A Yes.

20 Q In your opinion, with the required
21 mitigation measures and conditions of
22 certification, will the significant air quality
23 impacts of the Three Mountain Power project be
24 mitigated?

25 A Yes.

1 Q And with those conditions and mitigation
2 measures will the project comply with applicable
3 laws, ordinances, regulations and standards
4 relating to air quality?

5 A Yes.

6 MR. ZISCHKE: Thank you.

7 HEARING OFFICER BOUILLON: Does that
8 conclude your cross-examination --

9 MR. ZISCHKE: Yes, thank you.

10 HEARING OFFICER BOUILLON: -- of both
11 witnesses?

12 MR. ZISCHKE: That's all, yes.

13 HEARING OFFICER BOUILLON: Ms. Crockett.

14 CROSS-EXAMINATION

15 BY MS. CROCKETT:

16 Q The following questions will start with
17 Mr. Kussow.

18 Mr. Kussow, are you -- excuse me, my
19 brain just turned off for a second -- are you
20 familiar with the information in table 2 of
21 staff's presentation, Mr. Ngo's air quality
22 testimony, page 24.

23 A I'd have to see that to tell you.

24 HEARING OFFICER BOUILLON: Ms. Crockett,
25 are you talking about part two of the FSA?

1 MS. CROCKETT: It would be part two of
2 the FSA, Mr. Ngo's testimony, it's page 24 I think
3 is where the chart is, table 2.

4 MR. KUSSOW: I guess you asked me if I'm
5 familiar with it. I'm familiar with most of the
6 numbers in that table, yes.

7 MS. CROCKETT: How were those numbers
8 obtained for staff?

9 MR. KUSSOW: Well, the table indicates
10 that it is a listing of the measurements recorded
11 at the Burney monitoring station, taken from 1989
12 through 1993. And so our staff did conduct that
13 monitoring during that period of time. And this
14 data is reflecting those results.

15 MS. CROCKETT: Oh, excuse me, I'm sorry.
16 We need to go to table 3.

17 MR. KUSSOW: And do you have a question
18 about that table?

19 MS. CROCKETT: Are you familiar with the
20 numbers in this table?

21 MR. KUSSOW: Offhand I don't spend a lot
22 of time, you know, memorizing those numbers, but
23 if they are actually emission inventory numbers,
24 then I would have to support them.

25 And it says the source is the Air

1 Resources Board emission inventory. So our office
2 does accept the Air Resources Board emission
3 inventory for those years as their most accurate
4 estimate of our emissions.

5 MS. CROCKETT: Okay. Looking at the
6 trend line in this data, do you see anything
7 interesting about the trend line for '99, '93, '95
8 and then '96?

9 MR. KUSSOW: I don't see anything in
10 here from 1999.

11 MS. CROCKETT: Excuse me, 1990, 1993,
12 '95 and '96.

13 HEARING OFFICER BOUILLON: Are you
14 asking if he spots a trend?

15 MS. CROCKETT: I'm asking for a trend if
16 he can evaluate a trend line.

17 Would it help if I clarified that
18 question?

19 HEARING OFFICER BOUILLON: Wait, wait,
20 he's looking at the table.

21 MR. NGO: Can I interject for a minute,
22 because I'm the author of that table. You look at
23 under the table there's a little note. Say that
24 the 1990 data are not complete --

25 MS. CROCKETT: And that would have --

1 MR. NGO: -- and therefore you shouldn't
2 consider 1990 in the trend analysis.

3 MS. CROCKETT: Okay, well, let's just
4 then, let's simplify the situation. Let's do a
5 trend analysis between '95 and '96.

6 MR. KUSSOW: Well, the only trend that I
7 see is that emissions are shown as increasing for
8 all pollutants except for NOx emissions or NO2
9 emissions.

10 MS. CROCKETT: And that is almost half
11 of what was recorded in '95, is that correct?

12 MR. KUSSOW: For which pollutant? For
13 the --

14 MS. CROCKETT: For the NO2.

15 MR. KUSSOW: -- NO2? Yes, that's
16 correct.

17 MS. CROCKETT: Why is that number so
18 low?

19 MR. KUSSOW: Well, this emission data is
20 a combination of a couple things. It's a
21 combination of the stationary source data that we
22 maintain in our records, and then also it includes
23 estimations of all other -- well, I guess if this
24 table is the stationary source emission inventory,
25 then it would be coming directly from our records

1 in Shasta County.

2 MS. CROCKETT: So, this would indicate
3 in the Burney area that between '95 and '96 some
4 major source emitter stopped emitting in the
5 Burney area, is that correct?

6 MR. KUSSOW: That's not correct. I
7 think it would indicate that there was possibly a
8 major source that had notably decreased oxides of
9 nitrogen emissions. But not that they had stopped
10 emitting necessarily.

11 MS. CROCKETT: Do you know which plant
12 that was?

13 MR. KUSSOW: Not offhand, no.

14 MS. CROCKETT: Okay. Staff, this
15 question will be directed at staff, as well, to
16 Mr. Ngo, stated on page 24 of your testimony, Mr.
17 Ngo, you comment that this is old data. And that
18 all the tables, though, you feel sufficiently
19 reflect the data correctly, the current conditions
20 in the Burney basin.

21 Do you still believe that to be true?

22 MR. NGO: Can you repeat the question
23 again?

24 MS. CROCKETT: Okay. I'm quoting on
25 page 24, about the fourth paragraph down, just

1 above the table: Although the ambient air quality
2 data in air quality table 2 are sketchy and not up
3 to date, staff believes that the data are suitable
4 to describe the conditions of the area where the
5 facility is going to be sited.

6 And then you also go on a little bit
7 further in that, in the emission inventory data
8 from 1996 -- 1990 to 1996 were tabulated in the
9 air quality table 3.

10 Do you still believe that these tables
11 are representative of current conditions in the
12 Burney basin?

13 MR. NGO: When you say current, you mean
14 including 1999 data or '98 data?

15 MS. CROCKETT: Including 1998 data.

16 MR. NGO: You know, I haven't look at
17 the 1998 data, by the time we prepare the
18 condition, I mean by the time we prepare the
19 testimony, the FSA part two.

20 The reason why we did not include the
21 1998 data because the data had not been certified
22 by the ARB at that time.

23 Now, I do have look at the data in 1998,
24 although I didn't look at the total number result.
25 But the overall 1998 data for the entire Shasta

1 County have not changed much.

2 MS. CROCKETT: Within the Burney basin?

3 MR. NGO: No, not in the Burney basin.

4 In the entire Shasta County.

5 MS. CROCKETT: Did you specifically look
6 at the data in the Burney basin?

7 MR. NGO: Yes, I did.

8 MS. CROCKETT: What did you see?

9 MR. NGO: Hate to admit this, but
10 there's quite a bit of emission in the Burney area
11 in term of NOx emission and if I am not mistaken,
12 probably PM10, too.

13 MS. CROCKETT: I am currently passing
14 out for everyone to review, is a tabulated table
15 on the top. The table 3 reproduced, but at the
16 end of that table 3 is the tabulated emissions of
17 the Burney basin using Shasta County's emission
18 inventory, which Mr. Kussow is aware that I picked
19 up in late December.

20 (Pause.)

21 MS. CROCKETT: The Burney Resource Group
22 would like to have that marked as exhibit 73.

23 MR. ZISCHKE: We will object to
24 admitting that into evidence.

25 HEARING OFFICER BOUILLON: I've been

1 handed two pages, one of which appears to be a
2 reproduction of air quality table number 3 --

3 MS. CROCKETT: You don't have the actual
4 emission --

5 HEARING OFFICER BOUILLON: -- with an
6 addition -- excuse me?

7 MS. CROCKETT: You don't have the actual
8 emission inventory? Yes.

9 HEARING OFFICER BOUILLON: A recreation
10 of table number 3 with the addition of some 1998
11 data, is that correct, Ms. Crockett?

12 MS. CROCKETT: Correct.

13 HEARING OFFICER BOUILLON: I am going to
14 mark that document, that single page, as exhibit
15 number 74.

16 I've also been handed a multipaged
17 document, ten pages or so, entitled, 1998 emission
18 inventory. For the record, Ms. Crockett, would
19 you further identify that document?

20 MS. CROCKETT: Actually, yes, I can.
21 Mr. Kussow, did I come to your office in late '99
22 and ask for this emission inventory? And does it
23 represent the document you gave me?

24 MR. KUSSOW: Yes, you did come to our
25 office and request this document. And I believe

1 it looks to be the same document that we prepared
2 for you.

3 MS. CROCKETT: Thank you. This would be
4 the emission inventory for Shasta County.

5 HEARING OFFICER BOUILLON: Excuse me?

6 MS. CROCKETT: Stationary emission
7 inventory, Mr. Kussow?

8 MR. KUSSOW: Yes, it is. It's our
9 internal emission inventory.

10 MS. CROCKETT: Correct. It had not been
11 finalized yet, but all the data was on the table
12 but had not been calculated or had not been sent
13 to the ARB, is that correct?

14 MR. KUSSOW: I think it's sent to the
15 ARB, but they may not have finalized that in their
16 emission inventory.

17 MS. CROCKETT: Okay. So this is a fair
18 representation of Shasta County's emission
19 inventory of 1998?

20 MR. KUSSOW: It's our most accurate
21 estimate of stationary source emissions.

22 MS. CROCKETT: What the Burney Resource
23 Group has done to clarify the 1998 was to go
24 through --

25 HEARING OFFICER BOUILLON: What you're

1 entitled to do with these witnesses is ask
2 questions.

3 MS. CROCKETT: Okay.

4 HEARING OFFICER BOUILLON: When we get
5 to your direct testimony you may wish to have your
6 witnesses say something about this document. But
7 I presume you're having them marked at this point
8 so that you can ask one of these witnesses a
9 question.

10 MS. CROCKETT: Correct, thank you.

11 HEARING OFFICER BOUILLON: Ask the
12 question.

13 MR. ZISCHKE: And we do object, and will
14 object at the --

15 HEARING OFFICER BOUILLON: What's that?

16 MR. ZISCHKE: We do object to the
17 admission of both those documents, and --

18 HEARING OFFICER BOUILLON: They haven't
19 been offered yet, again.

20 MR. ZISCHKE: I understand that, I just
21 want to make that clear.

22 HEARING OFFICER BOUILLON: I understand
23 that. Or at least I anticipated that.

24 MR. ZISCHKE: In part because we're
25 seeing them for the first time today.

1 MS. CROCKETT: I need to offer these as
2 exhibits, is that my next step?

3 HEARING OFFICER BOUILLON: No. You had
4 them marked for --

5 MS. CROCKETT: For discussion.

6 HEARING OFFICER BOUILLON: -- for a
7 purpose of which I am unaware.

8 MS. CROCKETT: Okay.

9 HEARING OFFICER BOUILLON: I assumed you
10 wanted to ask these witnesses a question --

11 MS. CROCKETT: I do.

12 HEARING OFFICER BOUILLON: -- maybe
13 based on the information in them, or something.
14 But, you have not offered them in evidence, nor
15 would they be acceptable at this point without
16 further foundation probably from your witnesses,
17 so delay that part.

18 MS. CROCKETT: Okay, thank you.

19 In going over the table 3 in FSA part
20 two on air quality that Mr. Ngo offered, and
21 reviewing just the '95/96 data, there was a huge
22 discrepancy. And then if you look at the table
23 submitted by the Burney Resource Group, which is
24 an addition of all the sources in Burney, there is
25 a tremendous growth.

1 How can that be explained?

2 MR. NGO: Let me try to explain. This
3 evidence have been provided to us at one of the
4 workshop and the reason why that we have not
5 included in the table, because one, we want to
6 compare the emission inventory, we want to have it
7 from one source.

8 And that way we have a truer picture of
9 what we are comparing instead of jumping from one
10 inventory and then jump to a different inventory.
11 And we explained that to the Burney Resource Group
12 in maybe more than one of our workshop.

13 Now, I take a quick look at this again.
14 And then here is the list of the emission
15 inventory for 1999, from the Air Resources Board,
16 which take into account the 1998 data.

17 And just off the top of my head just in
18 the last few minutes when we have this document, I
19 just look at randomly two sources. And I try to
20 find it in here, and I don't, I can't see it.
21 Maybe I go too fast.

22 But what happened is, what I'm trying to
23 say is these, sometime the way I try to offer
24 this, because I used to work for the Air Resources
25 Board also, sometime you have an emission

1 inventory from the District doesn't mean that
2 everything from the District will go into the Air
3 Resources Board emission inventory as is.

4 There will be some screening. And there
5 will be some level of cleanup before it be entered
6 into the inventory, because of reason why because
7 in inventory you have to come from one source, so
8 when they prepare the state implementation to be
9 provided to the federal EPA, so they be
10 consistent.

11 And what I'm trying to clarify is that I
12 do not -- I am not sure in your newest table 3 I
13 can attest to the level of 1990 to 1998. Again, I
14 have problem accepting the 1998 data. Not that I
15 don't believe you, or I don't believe the
16 District. What I want to do is make sure that
17 when we look at the big picture of what we compare
18 we have to do it right.

19 If we don't have the same source or we
20 keep jumping around then we might jump to a wrong
21 conclusion. And that's the biggest reason why I
22 do not include the emission data in the table.

23 So for you to go -- I mean to ask me or
24 Mr. Kussow the question about whether this will
25 represent trend, I don't think is really a fair

1 question to ask. Because, you know, it's
2 different sources. Is not verified yet, that's
3 what I'm trying to say.

4 MR. KUSSOW: I'd like to respond, in
5 addition to Mr. Ngo's comment, in this regard.

6 I think in the table 3 that Burney
7 Resource Group has prepared here it's showing
8 larger numbers in 1998 for example, than other
9 years. And certainly I think everyone is aware
10 that existing sources in the area have not changed
11 that much as far as the stationary sources, but,
12 of course, their operation may have, from one year
13 to another, depending on the energy market as it
14 has changed over the years.

15 So I would think that a reaction from
16 the Air District on your submitted table 3 would
17 be that this could not really show a trend
18 analysis of any particular stationary source
19 growth in the area, but it may reflect differences
20 from one year to another in their operational
21 availability you might say.

22 MS. CROCKETT: Let me recap both of your
23 comments and see if I understand correctly.

24 Mr. Ngo, you are saying you did not use
25 the 1998 emissions inventory because it didn't fit

1 into your trend analysis, is that correct?

2 MR. NGO: No, --

3 MR. RATLIFF: Objection, I think that's
4 argumentative.

5 HEARING OFFICER BOUILLON: I'm going to
6 sustain that objection. That is not what he said.

7 MS. CROCKETT: That's what I was asking.

8 HEARING OFFICER BOUILLON: We don't have
9 any way to read the record back to you, but what
10 he said --

11 MS. CROCKETT: Oh, that's okay.

12 HEARING OFFICER BOUILLON: -- is the way
13 I understood him is that it's sort of like
14 comparing apples and oranges, that the figures in
15 this emission inventory, if you looked at those
16 figures for 1990, '93, '95 and '96, you might not
17 see the same figures that are on his chart.
18 Because it goes through a transformation and
19 editing process at the state level before the
20 state issues its final numbers.

21 And therefore he says you cannot just
22 lift figures off of this emissions inventory and
23 say here's your new year's data, because that's
24 not what the state does. And he has experience in
25 doing that very thing at the State of California.

1 Is that correct, Mr. Ngo?

2 MR. NGO: Yes, that's correct.

3 MS. CROCKETT: And then, Mr. Kussow, is
4 this data in the 1998 emissions inventory the data
5 that is submitted to the state?

6 MR. KUSSOW: Yes, it is, to my
7 knowledge, right.

8 MS. CROCKETT: And what does the state
9 do with that data?

10 MR. KUSSOW: That I'm not sure of. They
11 assemble their emission inventory using their own
12 approach which I'm not familiar with.

13 MS. CROCKETT: Do they alter your
14 numbers?

15 MR. KUSSOW: I'm not sure of that,
16 either.

17 MS. CROCKETT: Mr. Kussow, when you look
18 back on the reports that you send in that are
19 published, are they altered?

20 MR. KUSSOW: I have not reviewed that to
21 compare the two.

22 MS. CROCKETT: Let's go back to the
23 '95/96 data, since we know they're apples to
24 apples.

25 There is a 100 percent difference in the

1 NOx -- excuse me, in the NO2. Please explain
2 that?

3 MR. KUSSOW: I think you can see the
4 same thing occurring from 1990 to '93, you know,
5 basically a large increase. You can see the same
6 difference from 1995 going to '96.

7 So from one year to another, as I
8 mentioned earlier, depending on the operational
9 status of these same stationary sources, you may
10 have quite large differences in their emissions.

11 MR. NGO: I want to clarify something
12 else, too. I did look at the 1990 data emission
13 inventory for the Burney area. And the reason why
14 it was so low because there was a bigger source in
15 Burney, that PG&E, I think it was a compressor
16 station emission, is that right?

17 MR. KUSSOW: Yeah.

18 MR. NGO: They were not included in the
19 1990. So when you look at the -- when you add in
20 those source into the 1990 database emission
21 inventory, when you look at it, the overall trend,
22 the overall trend from 1990 to 1996, where there a
23 slight reduction.

24 Now '96 may be a odd year when the
25 numbers of emission, I don't have no explanation

1 for it, either. But when you look at the overall
2 trend you see a slight decrease. And then you go
3 clip it up in '98 -- I'm sorry, '96.

4 MS. CROCKETT: Well, continuing on,
5 let's just say that -- would you say
6 conservatively that the table 3 represents more of
7 a paper ton as opposed to a field evaluation?
8 Data collected via paper, just permit numbers. Or
9 do you actually get CMS data for these tonnages
10 that are reported? Or does the applicant submit
11 this data, or the owner submit this data? How
12 does that work?

13 MR. KUSSOW: Is that directed to me or
14 to Tuan?

15 MS. CROCKETT: Let's do it for Mr.
16 Kussow since he's handling the data.

17 MR. KUSSOW: Those data are a
18 combination of the emission calculation procedures
19 that we go through on an annual basis, and they
20 can use actual continuous emission monitor data,
21 or they can also include emission factor usage
22 from documents such as EPA document AP42.

23 So they're a combination of paper
24 calculations, you might say, and actual on-the-
25 ground emission measurements.

1 MS. CROCKETT: So, would there be a
2 chance of over-estimating or under-estimating?
3 Would you say that in looking at the '95/96 data
4 with the large discrepancy, that there could
5 possibly be a chance of error in this data? And
6 then especially if you correlate it to the Shasta
7 County emissions inventory that has not been
8 submitted to the state, I will grant you that,
9 with huge differences.

10 Could there be a correlation in error of
11 the data?

12 MR. RATLIFF: Could I ask that the
13 questions be one at a time. That was two
14 questions, I think.

15 MS. CROCKETT: No, I'm just kind of
16 including all the possibilities.

17 HEARING OFFICER BOUILLON: I heard
18 several questions, I thought.

19 MS. CROCKETT: Okay. Could there
20 be --

21 HEARING OFFICER BOUILLON: Let's ask
22 them one at a time so they can answer.

23 MS. CROCKETT: Okay. Could there be an
24 error in the data that's on these tables?

25 MR. KUSSOW: Yes, there could be,

1 especially if you had some of the data created by
2 emission factor usage, such as the EPA AP42
3 factors. They have a degree of confidence
4 associated with them. And depending on which ones
5 are used in the calculation they will have some
6 unreliability associated with them.

7 MS. CROCKETT: Okay. Thank you. If
8 there is a possibility of error in this data, how
9 does the District verify their data?

10 MR. KUSSOW: We can only verify the data
11 that we receive from the permitted sources through
12 their continuous emission monitors which we do
13 require periodic relative accuracy tests on those
14 monitors.

15 The emission factors we don't have any
16 control over the accuracy of those numbers. We do
17 not have actual source testing available, then
18 we're forced to use these emissions factors which
19 have, again, a certain confidence level associated
20 with them.

21 MS. CROCKETT: Does the District
22 normally do ambient monitoring in areas where they
23 don't normally do ambient monitoring occasionally
24 to verify local conditions?

25 HEARING OFFICER BOUILLON: I'm going to

1 object to that question.

2 MS. CROCKETT: Okay.

3 HEARING OFFICER BOUILLON: I think you
4 asked if they normally do monitoring where they
5 don't normally do monitoring.

6 MS. CROCKETT: Okay, let me restate
7 that. Occasionally do you do ambient air
8 monitoring in areas that you normally would not do
9 ambient air monitoring?

10 MR. KUSSOW: Only if it is supported by
11 an outside source, and if our staffing resources
12 would permit it.

13 And those instances have been few and
14 far between over the last decade or so.

15 MS. CROCKETT: Would it be safe to say
16 that looking at the 1998 emissions inventory from
17 Shasta County, the data from table 3, that there
18 would be a questionable amount of data that may or
19 may not be -- would there be enough data there to
20 raise questions in your mind that there needed to
21 be ambient air monitoring in the Burney basin?

22 MR. KUSSOW: No. I think the District
23 has gone on record as to its position as far as
24 the monitoring data in the Burney area, and that
25 we feel that the data we did collect during the

1 1989 to '93 period was adequately conservative for
2 estimating current conditions.

3 MS. CROCKETT: Let's get on to your PSD
4 authority, delegated authority. The PSD authority
5 and the MOA with EPA says that the District will
6 use the latest guidance for EPA modeling.

7 To your knowledge did the TMPP project
8 do the latest guidance modeling suggested by EPA
9 for the Three Mountain Power project in the Burney
10 area?

11 MR. KUSSOW: Yes.

12 MS. CROCKETT: They used the latest
13 guidance?

14 MR. KUSSOW: Yes.

15 MS. CROCKETT: May I refer you to page
16 21 of the Burney Resource Group's testimony.
17 Second paragraph, would you read it to us?

18 MR. KUSSOW: I don't have a copy.

19 HEARING OFFICER BOUILLON: Excuse me,
20 what page are you on?

21 MS. CROCKETT: You don't have a copy?

22 HEARING OFFICER BOUILLON: Did you say
23 page 21?

24 MS. CROCKETT: Page 21, second
25 paragraph. It starts out 40CFR.

1 HEARING OFFICER BOUILLON: I found it.

2 MS. CROCKETT: Would you read that,
3 please, into the record, Mr. Kussow?

4 HEARING OFFICER BOUILLON: No. We're
5 not going to do that. What we're going to do --
6 do you have a question about something that's in
7 there, whether or not they agree with it or
8 something, you can have him read it and ask him a
9 question. But this is not testimony that is in
10 the record yet.

11 MS. CROCKETT: Okay. Mr. Kussow, would
12 you take a moment and read that first six lines.

13 MR. KUSSOW: Okay.

14 MS. CROCKETT: Are you ready?

15 MR. KUSSOW: Sure.

16 MS. CROCKETT: Okay. Indicate that Mr.
17 Kussow has read these six lines. 40CFR parts 51
18 and 52 of appendix W states that it requires one
19 year of onsite or five years of national weather
20 service or NWS equivalent data is used for
21 modeling emission impacts of TMPP.

22 In the language -- in fact, the language
23 of the statute specifically addresses a 500
24 megawatt power plant such as Three Mountain --

25 HEARING OFFICER BOUILLON: Hold it,

1 Ms. Crockett. You're reading the testimony now,
2 which is specifically what I said we were not
3 going to do.

4 MS. CROCKETT: I'm sorry.

5 HEARING OFFICER BOUILLON: Do you have a
6 question? He has read that. If you want to ask
7 him if that, in fact, 40CFR parts 51 and 52
8 require five years of data, ask him.

9 MS. CROCKETT: Does it require five
10 years of data?

11 MR. KUSSOW: My familiarity with those
12 Federal Register sections indicates that if the
13 permitting authority does have existing data that
14 is considered a conservative estimate of current
15 conditions, then that data can be used.

16 And that other preconstruction
17 monitoring would not necessarily be required if
18 that data that is available does conservatively
19 estimate current conditions.

20 And so that is what the Air District
21 believes is the case for this project.

22 MS. CROCKETT: As the PSD MOA stated
23 that you will use the latest guidance for
24 modeling, is this the latest guidance?

25 HEARING OFFICER BOUILLON: Is that a

1 question?

2 MS. CROCKETT: Yes.

3 MR. RATLIFF: Could you describe which
4 guidance you're talking about?

5 MS. CROCKETT: The latest guidance for
6 modeling for ambient air quality.

7 MR. KUSSOW: Well, I'm not intimately
8 familiar with the modeling requirements. I would
9 say in general 40CFR parts 51 and 52 do indicate
10 what the modeling requirements are for a project
11 evaluation, yes.

12 MS. CROCKETT: Did you do this?

13 MR. KUSSOW: As I mentioned earlier, we
14 relied on the fact that we had a conservative
15 estimate of existing conditions. And we were
16 confident that that information was conservative
17 estimate of the existing conditions, so that
18 further examination of --

19 MS. CROCKETT: Excuse me, Mr. Kussow, --

20 HEARING OFFICER BOUILLON: No, excuse
21 me, Ms. Crockett. When you ask a question and he
22 starts to answer it, you let him answer.

23 MS. CROCKETT: Yes, sir.

24 HEARING OFFICER BOUILLON: If you think
25 it is nonresponsive, after you've heard his

1 answer, you may ask to have it stricken from the
2 record.

3 MS. CROCKETT: Okay.

4 MR. KUSSOW: So to continue, I guess, we
5 felt that we had existing data that was
6 conservative in order to estimate the current
7 conditions in Burney, and that we did not have to
8 go on with any other type of preconstruction
9 monitoring.

10 MS. CROCKETT: I would wish to have this
11 comment struck from the record. My question was
12 to Mr. Kussow, did he do this. He has not
13 answered that.

14 HEARING OFFICER BOUILLON: I believe
15 he --

16 MR. KUSSOW: Can you clarify for me what
17 you --

18 HEARING OFFICER BOUILLON: Excuse me.

19 MR. KUSSOW: Okay.

20 HEARING OFFICER BOUILLON: I believe he
21 has answered it, and that motion will be denied.

22 MS. CROCKETT: What year was the banking
23 program -- this will be to Mr. Kussow -- initiated
24 with Shasta, the banking of emission reduction
25 credits, instigated in Shasta County?

1 MR. KUSSOW: Well, I don't have my rule
2 book in front of me, so this would only be a
3 guess. I can't give you the precise year, but I
4 would have to guess it was around the year of 1992
5 or so.

6 MS. CROCKETT: The ERCs from Sierra
7 Pacific were retired in 1988, if I'm correct. Is
8 that correct?

9 MR. KUSSOW: That's correct.

10 MS. CROCKETT: How would ERCs from a
11 facility retired in 1998 -- excuse me, 1988, be
12 applicable in a banking program that doesn't exist
13 until 1992?

14 MR. KUSSOW: The rule specifically
15 allowed the acknowledgement of earlier emission
16 reductions that occurred prior to a given cutoff
17 date. And so there was a specific allowance to
18 acknowledge those emission reductions.

19 MS. CROCKETT: In your opinion, Mr.
20 Kussow, how much ozone transports from Burney to
21 Redding, or from Redding to Burney?

22 MR. KUSSOW: That's hard to judge. I
23 don't know if I can tell you precisely on what
24 that would be, but I think that ozone is a
25 regional pollutant, and it is handled in that

1 manner as far as looking for emission reductions
2 in the area that would serve to provide for an
3 achievement of the ozone standard.

4 I do not think there's been any studies
5 to verify transport one way or another from the
6 lower elevations to the higher elevations, nor the
7 opposite. But it is recognized as a regional
8 pollutant.

9 MS. CROCKETT: And conversely, how much
10 ozone do you think is created in the Burney area?

11 MR. KUSSOW: I don't have an estimate
12 for you on that. All I know is that the Burney
13 area currently has not shown any data that is
14 indicating it's violating either the state or the
15 federal standard for ozone.

16 MS. CROCKETT: Then that would prompt me
17 to ask how do you know, since there hasn't been
18 any current ambient data? Or do you have
19 something current from specifically the Burney
20 area?

21 MR. KUSSOW: The information that we had
22 was during the 1989 to '93 study. And as I have
23 mentioned before, we do consider that to be a
24 conservative estimate of current conditions.

25 MS. CROCKETT: Thank you. Mr. Ngo, you

1 stated that in reviewing the 1998 emission
2 inventory from Shasta County, which you did not
3 want to use, that you did note growth. That there
4 was a lot of NOx, is that correct, is that what
5 you said?

6 MR. NGO: Say it again, please?

7 MS. CROCKETT: I'm trying to remember
8 that when you were stating earlier that you said
9 in your initial review of the 1998 emission
10 inventory you did note that there was a
11 substantial change in the numbers --

12 MR. NGO: In 1998 --

13 MS. CROCKETT: -- in the area of -- the
14 1998, you said you initially reviewed the 1998
15 emission inventory and because the data had not
16 been refined, you chose not to use that data. And
17 that you had noted that there was some increase in
18 the numbers.

19 MR. NGO: Slightly.

20 MS. CROCKETT: Slight.

21 MR. NGO: Yes. When I'm say slightly,
22 when I say -- let me clarify that point. When I
23 say the emission increase slightly, I meant for
24 the entire air basin, not in Burney. For the
25 entire air basin the emission going slightly.

1 MS. CROCKETT: That's correct. Were you
2 able to glean out any of the local sources in the
3 Burney area that you were familiar with from other
4 inventory data that had been submitted to you?

5 MR. NGO: No.

6 MS. CROCKETT: Did you try to do that?

7 MR. NGO: Try to do what?

8 MS. CROCKETT: Find the local sources in
9 the Burney industrial emissions that were already
10 recorded in table 3. Did you try to look at them
11 and see if they were reported in Shasta County
12 emissions inventory?

13 MR. NGO: The only thing I tried --
14 remember the 1998 data was not available from the
15 Air Resources Board until the last few days. And
16 that's what the last what I get.

17 So, I mean, you know, it's just like, in
18 the mass rush of preparing for the hearing, I was
19 not looking to the real number, just kind of blend
20 of the overall picture. So I did not go into that
21 purpose of single out what source had increase or
22 what source had decrease.

23 That answer your question?

24 MS. CROCKETT: Thank you. Getting back
25 to the emission reduction credits, it is stated

1 that Shasta County is currently in nonattainment
2 for ozone, is that correct?

3 MR. NGO: For the entire air basin, yes.

4 MS. CROCKETT: For the entire air basin.

5 And that Shasta County is in nonattainment with
6 those banked emission reduction credits not in
7 use, is that correct?

8 MR. NGO: Yes.

9 MS. CROCKETT: So in the physical sense
10 of impacts to the air quality, with the activation
11 of those banked emission reduction credits, Shasta
12 County will suffer additional ozone impacts, is
13 that correct?

14 MR. NGO: With the activation of the new
15 one, of the emission reduction credits?

16 MS. CROCKETT: That's correct, credits
17 that have not been used.

18 MR. NGO: If they activate it right in
19 the Redding area, yes. Because we got -- let me
20 clarify my -- let me clarify.

21 The Redding area, what we are seeing is
22 the one-hour ozone air quality standard is, the
23 area in general classify at nonattainment for the
24 state one-hour ozone standard.

25 But in Burney area is not. So if you

1 are, the way I looked at the emission reduction
2 credits as a way like a preventative kind of
3 measure, in other word, if these emission
4 reduction credits is not going to be trade for the
5 Three Mountain Power, that it will trade for
6 somebody else in the future.

7 And then that company, whoever bought it
8 and site it in Shasta -- in Redding, then, yes, it
9 will contribute to the general ozone violation
10 area.

11 MS. CROCKETT: So the reality is that --
12 if I'm paraphrasing you correctly, that Shasta
13 County is currently in nonattainment for ozone?

14 MR. NGO: Right.

15 MS. CROCKETT: And we agree it's a
16 regional problem?

17 MR. NGO: Right.

18 MS. CROCKETT: So even though we're in
19 nonattainment for ozone as a regional problem,
20 with those emission reduction credits banked, that
21 when you activate them and the emissions are now
22 in the Burney basin, you are saying that Redding
23 will not be impacted by those emissions?

24 MR. NGO: Because the emission reduction
25 will use in Burney area?

1 MS. CROCKETT: Because the location, the
2 physical location of the plant?

3 MR. NGO: That's right. One more
4 clarification. One more clarification before we
5 jump to the conclusion, normally when the Air
6 Resources Board Staff prepare what we call the
7 state implementation for the entire state, Shasta
8 County included, to be submitted to the EPA for
9 approval, what they have to do with the emission
10 inventory, not only they have to include emission
11 from existing and operating sources, they have to
12 include we call a paper emission reduction credit,
13 the whole purpose of which is when they do their
14 entire air quality modeling say for the entire air
15 basin, so they take into account the emissions
16 that are in the bank.

17 So what happen when they do the planning
18 for the future how much reduction from across-the-
19 board or certain kind of reduction with a certain
20 category of equipment, when they do that they
21 already take into account these emission increase
22 from the bank in the future.

23 Now, if Three Mountain buy this emission
24 reduction credits, so what we're going to see, and
25 then use it in Burney, what we going to see -- I

1 quote from my FSA, what we going to see is a
2 slight, although very small, improvement in the
3 Redding area in term of meeting, reducing a little
4 bit of ozone. Don't ask me the number, because I
5 can't quantify them.

6 But when they use it in the Burney area,
7 because of the uniqueness of Burney area, those
8 emission -- and the Burney area is not a problem,
9 don't have no problem with ozone, and therefore
10 generally, when you look at the whole entire big
11 picture, you see a slight improvement.

12 Maybe not in term of real improvement,
13 but improvement over the planning process for with
14 the Air Quality District and the Air Resources
15 Board working with the federal agency to plan for
16 the future.

17 Am I clear now? Or do you want some
18 more?

19 MS. CROCKETT: I think what I'm trying
20 to understand is that you're saying that with the
21 addition of more emissions from the Three Mountain
22 project, to the overall regional basin we will
23 have an improvement in air quality, is that
24 correct?

25 HEARING OFFICER BOUILLON: That's not

1 what he said. I think his testimony will stand as
2 he has stated it. If you have other questions
3 about the area, I'd please ask you to get on with
4 them.

5 MS. CROCKETT: Okay.

6 HEARING OFFICER BOUILLON: And once we
7 see a transcript then we can analyze that and we
8 can make our arguments.

9 MS. CROCKETT: In a brief?

10 HEARING OFFICER BOUILLON: Maybe
11 several.

12 MS. CROCKETT: Okay. I'm going to move
13 along to ammonia slip. Excuse me one moment.

14 (Pause.)

15 MS. CROCKETT: You stated, Mr. Ngo, that
16 BRG over-estimates the likely level of ammonia
17 slip emissions, and then you submitted the River
18 Road Generating project in that source test that
19 was used for your rebuttal, is that correct?

20 MR. NGO: Yes, I did.

21 MS. CROCKETT: You stated the actual
22 emissions of the River Road Generating project are
23 so low, 0.01 to 0.2 ppm, which is about 1-to-20
24 percent of the staff's estimated ammonia emission
25 rate of 1 pound to 13 pounds per day.

1 You stated that the emission level from
2 this source test should be comparable to those of
3 the project, is that correct?

4 MR. NGO: Yes.

5 MS. CROCKETT: Five years from now would
6 you expect the Three Mountain Power project to
7 have this emission rate?

8 MR. NGO: I would if they follow through
9 with the manufacturer recommended change out for
10 the SCR system. If they don't, then they
11 wouldn't. But if they follow, you know, the
12 recommendation by the manufacturer of SCR, I would
13 think so, yes.

14 But, you know, --

15 MS. CROCKETT: No, go ahead.

16 MR. NGO: The way I see the SCR system,
17 the way it work was that it's not like, you know,
18 it degrade every year. What it does is as you
19 keep going constantly, if you do it right, every
20 year you maintain it, you go -- it's just like
21 your car. All those years you doing, you know, at
22 the same level and all of a sudden one year you --
23 it over, and that's why you become a gross
24 polluter. Same thing with the SCR system, the
25 catalyst system, they all work that way.

1 MS. CROCKETT: Would you feel that in
2 the life of the plant with a permitted level of 5
3 ppm of ammonia slip that their average emission
4 over the life of the catalyst -- are you following
5 me so far? Their average emission over the life
6 of a catalyst --

7 MR. NGO: Okay.

8 MS. CROCKETT: -- would exceed the
9 numbers that you have listed down here?

10 MR. NGO: I wouldn't think so. First of
11 all, the way, like I say, I already clarified --
12 tried to clarify before the way the SCR system
13 work, the way all catalysts work.

14 I cannot tested it because this is what
15 I learned in the school, and so far with my
16 experience with working with car. And I did have
17 one of my car having a problem with catalytic
18 converter.

19 But, the way it works, when you see the
20 SCR system, it should operate at a certain level,
21 when you first test it you should be operating at
22 that level. When you see it start to going up,
23 you know it time for replacement or you get into
24 trouble really quick, okay?

25 And the reason why you know you get into

1 trouble very quick because of the NO2 emission
2 monitor, continuous emission monitor system, when
3 it indicate there were problem, that you have to
4 inject a lot more ammonia to keep up at that
5 level, you know that your SCR need to be replaced,
6 or need to be cleaned, or need to be doing
7 something.

8 So, my SMH, the way I calculate in the
9 FSA, I use a 5 ppm, that's a conservative high
10 number. And even with that number we don't see
11 any problem with the project.

12 What I'm trying to show the community
13 and to intervenor was that even though the 5 ppm
14 is what I use, but the typical that I would see
15 probably really a fifth of that, or 20 percent of
16 that, with around 1 ppm or less.

17 And what I did try to find out was that
18 I have four, five year of the equipment from the
19 source test, from the River Road, that I attached
20 to my rebuttal. And what is showed right there,
21 you see it. I mean in every year, on and on and
22 on, it right on that level.

23 And then the way I talked to the
24 engineer at the County, I think Washoe County,
25 don't quite me on that, and he said that they keep

1 up with maintenance and they have them replaced,
2 like catalyst in five year, four and a half.

3 MS. CROCKETT: Would you explain the
4 relationship of NOx permitting level and ammonia
5 catalyst?

6 MR. NGO: When you say relationships,
7 can you be a little more --

8 MS. CROCKETT: Sure.

9 MR. NGO: Because it's a big one. I'm
10 not sure I be able to cover everything.

11 MS. CROCKETT: If the permitting levels
12 of NOx are high, would a project use less or more
13 ammonia? Is there a direct relationship between
14 the permitting levels of NOx, permitted levels,
15 and the amount of ammonia used in the catalyst?

16 MR. NGO: Okay. I see what you are
17 getting at. No, there is no direct relationship.
18 The way you have to have so many variable. First
19 of all, you have a type of catalyst. Second you
20 have how much catalyst you need. Third of all,
21 you need how much a resident time for it to work
22 within the catalyst system.

23 And then the most important of all is
24 the system of ammonia distribution. So when you
25 inject into the turbine exhaust, what you want to

1 do you want to chill the turbine right on the
2 moment you inject it, so then to have an even
3 distribution across the catalyst, everything
4 together there working in unison to produce, to
5 give you that level of confident of NOx emission.

6 And then when you operate it so
7 efficient, you not only are sure of NOx emission,
8 your ammonia emission pretty low.

9 Now if you mess up with any one of
10 those, then it will either show up in pretty bad
11 NOx emission, pretty high NOx emission or very
12 high ammonia.

13 So there is no direct relationship the
14 way you, you know, characterize it.

15 MS. CROCKETT: Okay, thank you. You
16 stated that you expect the Three Mountain Power
17 Plant to maintain the similar emissions for the
18 first five years of the project?

19 MR. NGO: Only if they keep up with
20 maintenance and for the SCR and the equipment,
21 everything, you know. It's not like -- just like
22 a car, you know, you don't keep up, you're not
23 going to have the emission, you know, maintained
24 very well.

25 MS. CROCKETT: If you believe that the

1 emissions could be maintained this low, why wasn't
2 the Three Mountain Power project permitted at a
3 lower level?

4 MR. NGO: They are permit at lower
5 level; they are permit at 2 ppm. They want a
6 limit at 2.5.

7 MS. CROCKETT: That's NOx. We're
8 talking ammonia.

9 MR. NGO: Oh, the ammonia level? You
10 got to give them some leeway so they know when
11 they're going to get into trouble. So the 5 ppm
12 is a limit. When your SCR start, or your
13 catalysts are having a problem, they jump real
14 fast. You don't have enough time to respond.

15 So, by the time you see that peak you
16 know that you have to do something right away.
17 You barely have enough time to do that.

18 And they did ask for 10 ppm from
19 beginning, but we are trying to get them down to
20 that level. What it does is that it's not a
21 performance of the SCR, but the lower the ammonia
22 emission level will result in the higher costs of
23 replacing the catalyst.

24 So, you see what I'm saying? It's all a
25 matter of money, all a matter of money. The

1 applicant, with the lower ammonia limit, they have
2 to spend more money to replace the catalyst more
3 often.

4 Am I clear?

5 MS. CROCKETT: You're clear.

6 MR. NGO: Okay.

7 MS. CROCKETT: So as the ammonia starts
8 to degrade -- or the catalyst, excuse me, as the
9 catalyst starts to degrade, then you are
10 indicating, if I'm correct, that they have to
11 inject more ammonia?

12 MR. NGO: When it start to degrade, this
13 is the point, at that point hopefully the way --
14 let me go back and explain a little bit about the
15 system.

16 The way you have the ammonia and NOx
17 emission, you have NOx coming out, you measure the
18 NOx from the stack, from the exhaust, before they
19 go to the atmosphere. And that NOx level come to
20 what we call a controller, a database -- I mean
21 it's like a computer, okay. I try to simplify
22 thing here, okay.

23 And that controller will feedback into
24 how much ammonia we inject over here, and when
25 they see the fluctuation over here, it would tell

1 this system to reduce or to increase the ammonia
2 emission -- ammonia injection.

3 Now, when the NOx emissions start going
4 down, this one start going down, too. So, it's
5 all computerized. But what happen is when this
6 one start going you see a big slip right away.
7 Then you know that it's time. Normally, you
8 don't, if you follow -- if you replace the
9 catalyst that often so that you don't -- you know
10 that you not going to get into trouble with the
11 limit, then you replace it before even you see
12 that blip, okay.

13 That's what I'm saying.

14 MS. CROCKETT: In your personal
15 knowledge of power plant operation are catalysts
16 normally replaced before that first blip?

17 MR. NGO: No. I seen some other
18 facility, I mean they have something like 15, 20
19 ppm, and I'm not surprised. The reason why
20 because they have, some of them have very high
21 ammonia limit on them. And, you know, the way I
22 seen them, I'm not -- you know, like I say, it's
23 all a matter of economic. How much the applicant
24 want to spend the money.

25 The lower the limit does not mean that

1 you're going to have to meet that limit. The
2 lower that limit mean you have to spend more money
3 on maintenance to make sure that you don't get to
4 that level.

5 MS. CROCKETT: So in actuality there's
6 no guarantee that those low numbers will be
7 achieved or maintained in the Burney basin?

8 MR. NGO: I think they're guarantee, all
9 right.

10 MS. CROCKETT: The numbers of .01 to .2
11 you feel will be achieved in the Burney basin?

12 MR. NGO: Eighty percent sure.

13 MS. CROCKETT: And would that --

14 MR. NGO: And then there was a 20
15 percent I not sure because everything would be
16 based on the design of the facility. What we will
17 be seeing. That's why we need to have the
18 verification part in the conditions of
19 certification; before they install equipment we
20 want to see it.

21 MS. CROCKETT: But they're only required
22 by law to maintain a 5 ppm, is that correct?

23 MR. NGO: Yes, that true, that correct.

24 MS. CROCKETT: And if they were to
25 maintain that 5 ppm what would be their daily

1 emission of ammonia?

2 MR. NGO: Roughly probably about 600
3 pound, you know, give or take a few, I round it
4 up.

5 MS. CROCKETT: So if they were to
6 achieve the 5 ppm what would be their daily
7 emission?

8 MR. NGO: For the entire facility?

9 MS. CROCKETT: In the Three Mountain
10 facility.

11 MR. NGO: About 600 pound per day.

12 MS. CROCKETT: I thought you stated it
13 could be 1200 pounds a day.

14 MR. NGO: I make a boo-boo right there.

15 (Laughter.)

16 MR. NGO: Sorry. Everybody, I'm a --

17 MS. CROCKETT: There's a lot of paper
18 here.

19 MR. NGO: Actually I'm sorry about that.
20 I use on the original, you know, what happened,
21 original they propose 10 ppm. And correction to
22 that level. And then, you know, when I do it in a
23 mad rush and then sometime I miss it totally. And
24 then when I look at the ammonia, because you got
25 comment on it, and then I say, oh, wait a minute,

1 I make a boo-boo. So.

2 MS. CROCKETT: So they could conceivably
3 emit 1200 pounds a day?

4 MR. NGO: No, 600 pound per day.

5 HEARING OFFICER BOUILLON: He said the
6 1200 was a mistake based upon an earlier
7 assumption of 10 ppm --

8 MS. CROCKETT: Oh, I'm sorry, I thought
9 he said the 600 --

10 HEARING OFFICER BOUILLON: -- which they
11 have since changed.

12 MS. CROCKETT: -- was a -- I'm sorry.
13 So it could conceivably be 600 pounds a day?

14 MR. NGO: Correct.

15 MS. CROCKETT: So, but you are offering
16 the operation of the River Road Generating project
17 as reassurance that Three Mountain will not do
18 that?

19 MR. NGO: No, no. No, no, that not what
20 I'm trying to do. If you look back into your
21 comment, your comment on the BRG, let me find the
22 page number -- okay, it's on page 3 of the Burney
23 Resource Group, dated November 15, and on page 3
24 there's a quote from bottom of page 3, and then
25 run on to the top of page 4.

1 It say, in fact the average
2 concentration ammonia in the stack over the life
3 of an SCR catalyst be one-half or more of the
4 guarantee slip of 5 ppm. And then the next
5 sentence say something like, given the low NOx
6 emission requirement and the permit cap on
7 ammonia, it is likely that the plant will have a 2
8 ppm ammonia slip initially, followed by 3 in the
9 second year and 3 to 4 ppm in the third year.

10 What I'm trying to do with the River
11 Road ammonia project testing was to show you that
12 is not the case. That pretty much my -- I believe
13 that this is pretty much speculation.

14 Because what I see is that the real
15 source test of the same system with the same size
16 have been -- currently, that they are much below
17 that. So I just wanted to show you with the data
18 for the community assuring that, yes, you know, we
19 shouldn't have to worry about this.

20 MS. CROCKETT: How old was the test data
21 from River Road?

22 MR. NGO: From 1997 up all the way to, I
23 believe, 2000. The latest one in August of 2000
24 or September of 2000, I believe.

25 MS. CROCKETT: And during that time --

1 was the plant commissioned in '97?

2 MR. NGO: Say again?

3 MS. CROCKETT: Was the plant
4 commissioned in '97?

5 MR. NGO: I think the commission
6 probably the later part of '96, but they have
7 initial test on '97, I believe.

8 MS. CROCKETT: Okay. So your test shows
9 that --

10 HEARING OFFICER BOUILLON: Ms. Crockett,
11 I'm going to have to interrupt you. It's
12 approaching 3:00. We're going to have to take a
13 break anyway, and we had scheduled some other
14 witnesses at 3:00.

15 Based upon your requested time for
16 cross-examination you should have been done a long
17 time ago. So I think we'll take a break at this
18 time for 10 minutes. And I'd like you to review
19 your remaining cross-examination of these
20 witnesses, and do what you can to get us back on
21 the schedule.

22 MS. CROCKETT: Okay.

23 HEARING OFFICER BOUILLON: I know we had
24 made a commitment to put some witnesses on at
25 3:00. Off the top of my head I can't remember who

1 they are.

2 MS. HOLMES: Dr. Rose will be testifying
3 at 3:00 and he's not available tomorrow, so I do
4 believe it's important he go today.

5 HEARING OFFICER BOUILLON: But can he
6 wait a little later than 3:00 to start? Okay,
7 we'll get him on today.

8 MS. HOLMES: As long as he's finished by
9 5:00.

10 MR. ZISCHKE: If we have a sense of --

11 HEARING OFFICER BOUILLON: Or maybe not
12 5:00.

13 MR. ZISCHKE: If we have a sense, Mr.
14 Bouillon, of how long the Burney Resource Group's
15 questions will be, we've got a couple of follow-up
16 questions based on what's come up. And then we
17 have what I would think is probably about five
18 minutes of questions for their air witnesses. So
19 we can try to do it pretty expeditiously,
20 depending on the time length of their questions.

21 HEARING OFFICER BOUILLON: We'll see how
22 it goes. Let's take, as of right now we'll take
23 ten minutes and see if we can get moving.

24 (Brief recess.)

25 HEARING OFFICER BOUILLON: Round three.

1 (Laughter.)

2 HEARING OFFICER BOUILLON: Ms. Crockett,
3 you may continue.

4 MS. CROCKETT: I will reduce this to one
5 more question on ammonia slip, and then one quick
6 question on cooling tower drift analysis.

7 Mr. Ngo, are you familiar with the
8 Harbor Generating Station?

9 MR. NGO: The which one again?

10 MS. CROCKETT: Harbor Generating Station
11 in Los Angeles.

12 MR. NGO: I am not familiar with that,
13 ma'am. Actually, I'm pretty bad with name, I
14 probably know the facility, but I never worry
15 about name.

16 MS. CROCKETT: I'm going to hand this to
17 you and then I'm going to have you read just two
18 quick pieces -- I'm going to ask you to look at
19 them, and I'm going to ask you a question about
20 them.

21 MR. ZISCHKE: What is "this"?

22 HEARING OFFICER BOUILLON: What is
23 "this"?

24 MS. CROCKETT: It's on ammonia slip.

25 HEARING OFFICER BOUILLON: Is it some

1 piece of --

2 MS. CROCKETT: It's a source test.

3 HEARING OFFICER BOUILLON: It's a what?

4 MS. CROCKETT: A source test of the
5 Harbor Generating Station.

6 MR. RATLIFF: I object on the grounds
7 that we haven't seen the material in question.

8 HEARING OFFICER BOUILLON: I'm going to
9 sustain that objection. He doesn't know of the
10 facility. It would be very difficult for him to
11 read a couple of paragraphs and offer any kind of
12 an opinion.

13 MS. CROCKETT: It has the full South
14 Coast header, and was prepared by -- since a
15 source test was introduced to support a
16 conclusion, I would like to enter a source test to
17 support our position on ammonia slip.

18 HEARING OFFICER BOUILLON: Well, that
19 would be your testimony, and you are free to do
20 that probably. If you can do that in connection
21 with your own testimony.

22 But to try and cross-examine Mr. Ngo,
23 first of all on a document that he may well have
24 never seen before, and second of all, on a
25 facility with which he says he's not familiar,

1 we're not going to do that. That kind of question
2 would be relatively valueless to us.

3 MS. CROCKETT: Okay. Then we'll get on
4 to cooling tower emissions.

5 At the level of 5000 TDS per liter,
6 approximately 20 cycles for the Three Mountain
7 Power project that was stated in their mitigation
8 plan, I saw nowhere in their biological assessment
9 or their mitigation plan impacts to the prime
10 agricultural land within that one-mile radius.

11 Is there any data that has been done on
12 the amount of deposition of salts to that land?

13 MR. NGO: That have nothing to do with
14 air quality, does it? I mean I only do the air
15 quality part. Biological thing I did not prepare.
16 So I'm not sure I be qualified to answer your
17 question on that part.

18 HEARING OFFICER BOUILLON: Ms. Crockett,
19 are you asking about the effect of the air
20 emissions upon the soil?

21 MS. CROCKETT: No, the amount of
22 deposition of chemicals emitted from the stack.

23 HEARING OFFICER BOUILLON: On the soil?
24 On agricultural land?

25 MS. CROCKETT: On soil, on the land

1 around the plant.

2 HEARING OFFICER BOUILLON: Right. That
3 is a topic more fit for soils and water resources
4 than it is for air emissions. He'll tell you
5 what's in the air. The effect upon the farmland
6 is a topic for the soils person, soils and water,
7 which is a combined topic.

8 MS. CROCKETT: Okay.

9 HEARING OFFICER BOUILLON: You've got
10 the wrong witness here.

11 MS. CROCKETT: Okay, thank you. Then I
12 am done questioning the witness. And Mr. Kussow,
13 as well.

14 HEARING OFFICER BOUILLON: All right.
15 Before we go back to Mr. Zischke or to Mr.
16 Ratliff, the Committee, itself, has some
17 questions. Ms. Praul.

18 EXAMINATION

19 BY MS. PRAUL:

20 Q This seems like ancient history, we've
21 been here on this subject for awhile, but to go
22 back to your District data, Mr. Kussow, how many
23 of the stationary sources have CMS on them, and
24 which ones are those, more or less?

25 A The facilities that would have the

1 continuous emission monitors would mostly include
2 the facilities that have large boilers, and so
3 that would include Sierra Pacific in Burney,
4 Burney Mountain Power, Burney Forest Products, and
5 in some respects the Dycolite Minerals Corporation
6 has monitors on some other pollutants.

7 Q So it would be possible, we're not
8 asking you to, but should we choose to, you could
9 submit for the record the actual annual data for
10 those CMS units for '89 through '99?

11 A The data, we do have that as monthly
12 emission reports. And we also have it as an
13 annual calculation each year that we do for those
14 facilities using that monthly data.

15 Q This inventory here, I guess it's not in
16 the record, but you've seen it and you feel that
17 that's the District's best sort of representation
18 of what you understand the emissions were in '98?

19 A That's correct.

20 Q If electricity market conditions, which
21 I know we don't have any idea what's really going
22 on there, but if in '98 they were fairly
23 reflective of say, you know, everything being held
24 constant, they stayed the same, would those
25 emissions be fairly representative of what you

1 would expect in the next couple years?

2 A Well, I would say not necessarily
3 because in 1998 I'd have to study that to see
4 exactly how that affected those facilities. But
5 in general, I would say during that time period
6 there may have been some of those facilities that
7 were in a curtailed operating condition to some
8 degree. And so the emissions can increase and
9 decrease from what is shown in a particular year
10 such as that.

11 So you'd really have to examine probably
12 a longer period of time to get a good idea of what
13 the normal emissions from that facility would be.

14 Q And the CMS data would allow us to do
15 that?

16 A Right.

17 Q Right. If we took '98 just as a given,
18 not trying to draw a trend line, because I
19 understand the difference between the apples and
20 the oranges, would those numbers lead you to any
21 different conclusions with respect to the
22 conditions of certification for this project?

23 A The conditions of certification were
24 developed from the conditions on our draft
25 authority to construct permit, or PSD permit. And

1 that was an assembly of conditions that were
2 directly related to District rules and
3 requirements for permitting such a facility.

4 And that was based on the record as it
5 exists at the time that we wrote that document.
6 So I don't see anything in the emission inventory
7 that would make me change any of those conditions.
8 They're pretty specific as to what is required in
9 our permitting according to our rule 21, which is
10 a new source review rule.

11 And as such, those conditions aren't
12 largely impacted by the emission inventory other
13 than if you were to do a trend analysis you could
14 look at the emission inventory to do that, but
15 you'd have to do it in a proper manner.

16 I believe that the staff did that in
17 their overall review of the emission inventory, as
18 far as a trend analysis looking at more than one
19 year, you might say not focusing on 1998, but
20 looking at a longer period of time.

21 And I also believe the conditions that
22 we have in our permit which were transferred to
23 the certification conditions are consistent with
24 our rule 21.

25 Q I guess I have one last question here

1 which is how would the decision makers use the
2 information presented for '98, or any perhaps
3 actual data that you have for '99 for the CMS, and
4 be persuaded that indeed the existing data that
5 you had between '89 and '93 was indeed a
6 conservative estimate of current conditions?

7 A I think in our preliminary determination
8 of compliance document we indicated the reasons
9 why we felt that was the case. In looking at the
10 PM10 data that we have throughout Shasta County at
11 several locations, including Anderson, Redding and
12 the Burney area, during that period of time, we
13 felt that for PM10 there was a general trend
14 downward of those emissions over an extended
15 period of time covering those years at all of
16 those locations.

17 So that indicated that there was a
18 general phenomenon going on in all locations of
19 the County that showed that decrease.

20 With respect to ozone, we found the same
21 thing, that in our data that we had, we had no
22 violations of the state standard for ozone in the
23 Burney area. And we did not feel that there was
24 any industrial growth in the area.

25 In other words, the emissions from the

1 stationary sources were there all of these years.
2 There have been no additional new sources coming
3 into the area. As well as the development of
4 mobile sources, we did not feel that there was a
5 noticeable increase in the mobile source inventory
6 for the Burney area.

7 In general, ozone is a little bit
8 different animal than PM10 in that it's a regional
9 pollutant, and it is highly dependent on weather
10 conditions. So to draw any short-term conclusions
11 looking at one year or another is very dangerous
12 prospect. You have to look at, you know, five to
13 ten year period really to tell you whether things
14 are generally improving or not.

15 And we felt that ozone, you know, in the
16 County in general, was doing that, except for a
17 few bad years that we've had unusual ozone numbers
18 due to weather effects, that the general trend
19 again was downward.

20 Q So '98 would have been one of those bad
21 years?

22 A That's correct. We had an unusual
23 amount of ozone exceedences down here on the
24 valley floor. Twice what our average had been
25 over any previous ten-year period.

1 So we've had some other individuals on
2 other projects look solely at that 1998 data, and
3 try to make the point that things appear to be
4 getting much worse.

5 When you see then in the following year,
6 1999, we were, you know, less than half of that
7 number in ozone violations. And we're returning
8 more to a usual pattern right now.

9 Q So it might be possible to conclude if
10 you had half of the violations in '99 that the
11 actuals for '99 for NOx and VOC would be
12 significantly lower than the '98 numbers?

13 A Well, again, our ozone values that we
14 received for concentrations are also highly
15 dependent on mobile sources. So, in Shasta County
16 we have been making the point that our stationary
17 sources aren't largely responsible for our ozone
18 exceeding problems. About 60 to 70 percent of our
19 inventory for NOx is associated with mobile
20 sources.

21 Q So just to close, you would continue to
22 feel comfortable, even though we've got apples and
23 oranges here, with say a doubling between '90 and
24 '98, you still feel comfortable that those 1990
25 numbers that you used are conservative, as your

1 basis for making your assumptions related to the
2 PSD modeling? Even though there's a doubling in
3 the apples and oranges that we have in front of
4 us? You've certainly explained how that could be
5 the case.

6 A Yeah, I think someone made the point
7 earlier that in 1990, I think it was Mr. Ngo, that
8 the PG&E facility was not included in that
9 emission inventory number. So that's one of the
10 reasons why, you know, the value is so different
11 from 1990 to some of the later years.

12 But we were generally, our confidence in
13 looking at the data, we were looking at the
14 ambient air monitoring data that we have at other
15 areas in the County for PM10 and ozone in order to
16 draw general conclusions about the Burney area.

17 And then also asking the question, has
18 there been considerable mobile source growth
19 there. Have we influenced the ozone values. Has
20 there been any additional stationary source growth
21 since that time. And both answers were no.

22 The Burney area also is not subject to
23 the high temperatures that we are down here on the
24 valley floor, and that was one of the reasons why
25 our values for 1998 on ozone here in the valley

1 were quite a bit higher.

2 And it isn't subject to valley transport
3 as we are here under 1000 feet with most of our
4 exceedence days being associated with known
5 transport in the valley area from the broader
6 Sacramento area.

7 Q Thank you. One more question. Was
8 there any discounting of the banked credited that
9 predated the rule?

10 A No. The discounting of the emission
11 reduction credits comes actually when they are
12 used. And so I want to be very clear about that.
13 If anyone is wanting to access an emission
14 reduction credit that is not the current holder,
15 the District would take off of that allowance a 5
16 percent deduction in order for an air quality
17 improvement.

18 And that relates to some of the
19 questions that the Burney Resource Group had
20 earlier on whether there would be an actual
21 benefit to the air quality. That is something
22 that's required by our rule on emission reduction
23 credits, that unless the owner uses those credits
24 themselves, the District would take a 5 percent
25 discount upon their use.

1 Q And so the same discount factor applies
2 regardless of the vintage of the credits?

3 A That's correct, once they're banked into
4 the system, then that allowance is automatically
5 made at the time of use.

6 MS. PRAUL: Thank you.

7 HEARING OFFICER BOUILLON: Mr. Zischke,
8 do you have any follow-up questions?

9 MR. ZISCHKE: Just a few follow-up
10 questions.

11 RECROSS-EXAMINATION

12 BY MR. ZISCHKE:

13 Q With respect to the issue of maintenance
14 that was raised, how this plant will operate once
15 it's approved must be determined by the terms of
16 our permit and certification, is that correct?

17 MR. KUSSOW: Is that question directed
18 to me or --

19 MR. ZISCHKE: Either of you.

20 MR. KUSSOW: Can you repeat the
21 question, please?

22 MR. ZISCHKE: The question is how this
23 plant will operate will be determined by
24 compliance with the permit conditions that apply
25 to this project, is that correct?

1 MR. KUSSOW: Yes, there are certain
2 requirements for ammonia slip and for oxides of
3 nitrogen on the permit. So there would not be an
4 allowance for the owner/operator to violate any of
5 those conditioned requirements without seeking a
6 variance or other remedies from the District.

7 And they would be noted as immediately
8 in noncompliance should any of those conditions be
9 violated.

10 MR. ZISCHKE: And with respect to the
11 issue of maintenance, if I could direct your
12 attention to proposed condition air quality-4, on
13 page 4 of the December 7th air quality errata,
14 indicating equipment to be maintained so it
15 operates as it did when the permit was issued.

16 Does that permit condition for this
17 project takes care of the maintenance -- does that
18 take care of the maintenance, Mr. Ngo, that you
19 were referring to for plant equipment?

20 MR. NGO: Is that for me? Or for him?

21 MR. ZISCHKE: Yes.

22 MR. NGO: For me?

23 MR. ZISCHKE: Yes.

24 MR. NGO: Oh, I'm sorry, I thought you
25 were asking him. Sorry.

1 The way I envision is when you have a
2 facility go on line, you have to test them. And
3 what we are trying to say here is what the
4 equipment have to maintained so that you always
5 meet that level.

6 MR. ZISCHKE: Okay.

7 MR. NGO: Is that clear?

8 MR. ZISCHKE: Mr. Kussow, with respect
9 to the requirement that the Burney Resource Group
10 cited on page 21 of their testimony, does that
11 requirement, does that refer to meteorological
12 data?

13 MR. KUSSOW: Yes, that's correct.

14 MR. ZISCHKE: And isn't the year worth
15 of meteorological data only required if a refined
16 analysis is required?

17 MR. KUSSOW: That's correct. Otherwise
18 you would be using the worst case default data.

19 MR. ZISCHKE: Under the guidelines in
20 40CFR parts 51 and 52, appendix W, if a project
21 can demonstrate compliance with the PSD
22 requirements using screening models, isn't it
23 correct that refined modeling is not required?

24 MR. KUSSOW: That's correct. The
25 screening model is the first step. And normally

1 that's its purpose. If you pass at the screening
2 level then you do not go on to the refined model
3 analysis.

4 MR. ZISCHKE: I guess, Mr. Kussow, a
5 question on mitigation. Is the mitigation for the
6 Three Mountain Power Plant based upon an
7 assumption that the area is nonattainment for both
8 ozone and PM10?

9 MR. KUSSOW: That's correct.

10 MR. ZISCHKE: So with respect to the
11 chart that was referenced by the Burney Resource
12 Group and their chart, based on that chart, if
13 that information is admitted and if it were to be
14 verified and correct, is the project still
15 required to fully mitigate its emissions?

16 MR. KUSSOW: I'm unclear on what you
17 mean, which information you're referring to there.

18 MR. ZISCHKE: I am referring to the air
19 emission inventory that has been marked but not
20 yet accepted into evidence, and then their chart
21 based upon that, the 1998 data.

22 If this information is correct, is the
23 project still required to fully mitigate its
24 emissions?

25 MR. KUSSOW: Yes, it is.

1 MR. ZISCHKE: Thank you. That's all.

2 HEARING OFFICER BOUILLON: Mr. Ratliff.

3 MR. RATLIFF: Yes, one question for Mr.

4 Ngo.

5 REDIRECT EXAMINATION

6 BY MR. RATLIFF:

7 Q And that has to do also with the issue
8 of the metric meteorological data that was
9 referenced by Mr. Zischke and for which you were
10 cross-examined earlier.

11 When the issue of meteorological data
12 came up did you or anyone else on the staff
13 contact EPA about whether or not additional annual
14 monitoring would be required to adequately do the
15 analysis?

16 MR. NGO: Yes, I did.

17 MR. RATLIFF: And what was the answer?

18 MR. NGO: Before we ever did that,
19 before I even contacted the EPA, we did a -- I
20 look at the guideline by itself. And then we
21 followed through with a guideline of we contact
22 EPA. We also offer to the EPA the idea that
23 requiring the applicant to do the five-year
24 monitor. And they support the concept.

25 So, the question on air quality monitor

1 station, or the quality of it, or how old it is,
2 is not really playing to an important role any
3 longer.

4 MR. RATLIFF: Did EPA say that it was
5 necessary to do, what was it, five years
6 meteorological data --

7 MR. NGO: No.

8 MR. RATLIFF: -- or at least one year of
9 site specific data for this project?

10 MR. NGO: No, not necessary.

11 MR. RATLIFF: Why did they say that was
12 not necessary?

13 MR. NGO: Because only when you do the
14 screening analysis that you exceed a certain
15 level, they call significant level, that's
16 specified in the guideline, then you would have to
17 go to the more refined model.

18 And when you do that then you need to
19 have the actual good monitor data, weather data,
20 in order to do a meaningful air quality impact
21 analysis.

22 But if you below that level you don't
23 have to do it.

24 MR. RATLIFF: Thank you, I have no other
25 questions.

1 HEARING OFFICER BOUILLON: Ms. Crockett,
2 do you have some brief questions?

3 MS. CROCKETT: Just one. Yes, I do,
4 they're very brief.

5 RECROSS-EXAMINATION

6 BY MS. CROCKETT:

7 Q This would be for Mr. Kussow. Did the
8 screen model indicate exceedence of air quality
9 standards would occur?

10 HEARING OFFICER BOUILLON: I'm sorry,
11 Ms. Crockett, I couldn't hear the question.

12 MS. CROCKETT: Did the screen model
13 indicate exceedences of air quality standards
14 would occur?

15 MR. KUSSOW: I think the screening model
16 predicts the project's impact, and it indicates
17 that some of the standards are already being
18 exceeded by background levels. So the project
19 does add to that, and that's the requirement for
20 the mitigation that's on the project.

21 MS. CROCKETT: Thank you. Just one
22 other question. Thank you, Burney Resource Group
23 is finished with this witness.

24 HEARING OFFICER BOUILLON: Mr. Zischke?

25 MR. ZISCHKE: No further questions,

1 thank you.

2 HEARING OFFICER BOUILLON: Mr. Ratliff?

3 MR. RATLIFF: No.

4 HEARING OFFICER BOUILLON: All right. I
5 would imagine you're offering the FDOC?

6 MR. RATLIFF: Yes, we are.

7 HEARING OFFICER BOUILLON: Any
8 objection?

9 MR. ZISCHKE: No.

10 HEARING OFFICER BOUILLON: The FDOC
11 exhibit 73.

12 MS. CROCKETT: No objection.

13 HEARING OFFICER BOUILLON: One of the
14 things we didn't do earlier when we talked about
15 the cross-examination, the written questions you
16 had for Dr. Obed, we did not admit his testimony
17 at that time. It was not offered. Would you like
18 to admit that part of the FSA, also?

19 MR. RATLIFF: Yes, and I can't remember
20 if we offered -- we discussed the staff-sponsored
21 testimony earlier, but I don't know if we had ever
22 resolved the issues regarding it.

23 But I wanted to offer the portion of,
24 that portion of part three of the FSA that Mr. Ngo
25 sponsored, plus his rebuttal testimony. And the

1 errata that accompanied the testimony.

2 HEARING OFFICER BOUILLON: Yes, I --

3 MR. RATLIFF: But the one-page sheet I
4 wanted to withdraw. We will just deal with that
5 later. I think people need time to see it. It's
6 pretty much a clean-up task. And those issues,
7 we'll just deal with them in the future, in future
8 comments.

9 HEARING OFFICER BOUILLON: All right.
10 Speaking of Mr. Ngo's testimony, in addition to
11 the FSA I have, as part of the staff's rebuttal
12 and errata for the FSA parts two and three, which
13 is exhibit 67, with regard to Mr. Ngo I have the
14 first part is entitled rebuttal to the testimony
15 of the Burney Resource Group.

16 Then there is a second part, and that
17 has an attachment which is quite lengthy, and then
18 there's a second part called rebuttal to the
19 testimony of Black Ranch. And then there is a --
20 and that is a two-sided single page.

21 And then there is an errata for air
22 quality testimony, which is a two-sided single
23 page. And then there are separate conditions of
24 certification, I believe also sponsored by Mr.
25 Ngo.

1 And it's my understanding that you're
2 offering all of that at this time?

3 MR. RATLIFF: Correct.

4 HEARING OFFICER BOUILLON: And the
5 additional amendments to those conditions of
6 certification is the technical corrections that
7 Mr. Ngo referred to that none of us have seen yet,
8 is that correct?

9 MR. RATLIFF: That's right. We'll take
10 care of that later.

11 HEARING OFFICER BOUILLON: All right. I
12 believe that takes care of the exhibits up to
13 date, with the exception of the 74 and 75, which
14 is the Burney Resource Group modified table 3 and
15 the 1998 emissions inventory.

16 And we're going to delay a ruling on
17 that until we've heard from their witnesses. They
18 may be able to make that more relevant than they
19 are at the present time.

20 So, these witnesses, I believe, can be
21 excused. Any reason not to?

22 MR. RATLIFF: Not so far as we're
23 concerned.

24 MS. CROCKETT: That's fine.

25 HEARING OFFICER BOUILLON: All right,

1 these witnesses are excused.

2 I have spoken with Dr. Rose, and he has
3 graciously consented not to be on at 3:00, as long
4 as we do get to him today. And we will.

5 Consequently, we have to finish the
6 topic of air quality we have the Burney Resource
7 Group witness Gilbert?

8 MS. CROCKETT: Mr. Gilbert, yes.

9 HEARING OFFICER BOUILLON: We'll call
10 him at this time.

11 MS. CROCKETT: Yes. Mr. Gilbert. We're
12 requesting about a five-minute break. The witness
13 will be ready in just about five minutes.

14 HEARING OFFICER BOUILLON: Well, in the
15 meantime one of the other stipulations that was
16 apparently reached by the parties, and if I state
17 it correctly you can all accept it. If I don't, I
18 can be corrected.

19 Black Ranch has submitted the written
20 testimony of a either Dr. or Mr. Erbes, E-r-b-e-s.
21 And it's my understanding that that would be
22 accepted by the parties by stipulation without any
23 need for cross-examination, is that correct, Mr.
24 Ratliff?

25 MR. RATLIFF: So long as it is clear

1 that by so stipulating we don't agree to the
2 conclusions in the testimony, yes.

3 HEARING OFFICER BOUILLON: You don't
4 agree to what?

5 MR. RATLIFF: So long as it's clear from
6 such a stipulation that we don't necessarily agree
7 with any of the conclusions in the testimony, we
8 would so stipulate, yes.

9 HEARING OFFICER BOUILLON: Of course,
10 that's true of all the testimony we're putting in
11 here.

12 Ms. Crockett?

13 MS. CROCKETT: BRG would so stipulate.

14 HEARING OFFICER BOUILLON: Mr. Zischke?

15 MR. ZISCHKE: Yes, we agree to the
16 admission of the evidence.

17 HEARING OFFICER BOUILLON: And that was
18 an offer made by the counsel for Black Ranch, so I
19 can attest to the concurrence of Black Ranch in
20 that stipulation.

21 We will make that testimony exhibit
22 number 76. And that should have been served on
23 all the parties. If any party does not have a
24 copy of that, they can contact Black Ranch.

25 MR. ZISCHKE: Just if we could refresh

1 my recollection while we're waiting, 74 and 75,
2 those are the --

3 HEARING OFFICER BOUILLON: That's the
4 expanded table 3 and the 1998 emission inventory
5 in that order. And those have not been admitted
6 in evidence, but they have not yet been rejected,
7 either.

8 And while we're waiting for this -- Mr.
9 Crockett's here, so he can represent them at the
10 moment -- while we're waiting using the five
11 minutes fruitfully, I want to make sure after we
12 finish with Mr. Gilbert we will be finished with
13 all topics except biological resources and water
14 resources.

15 Does anyone think otherwise? Mr.
16 Zischke?

17 MR. ZISCHKE: That's correct.

18 HEARING OFFICER BOUILLON: Mr. Ratliff?

19 MR. RATLIFF: Correct.

20 HEARING OFFICER BOUILLON: Ms. Crockett?

21 MS. CROCKETT: Yes.

22 HEARING OFFICER BOUILLON: All right.

23 If we can begin now with Mr. Gilbert.

24 //

25 //

1 Whereupon,

2 GREG GILBERT

3 was called as a witness herein and after first
4 being duly sworn, was examined and testified as
5 follows:

6 DIRECT EXAMINATION

7 BY MS. CROCKETT:

8 Q Mr. Gilbert, were you involved in the
9 preparation of the testimony submitted by the
10 panel for BRG?

11 A Yes, I was.

12 Q Is there any correction to your
13 testimony at this time?

14 A Tuan has made corrections to the
15 calculations on the sulfur content and natural
16 gas. And not wanting to repeat what he's done,
17 we're accepting those corrections.

18 I believe we used a sulfur content of 1,
19 and he's reduced it to .4, if I recall, about a 60
20 percent reduction.

21 Q Is the prepared testimony true and
22 correct to the best of your knowledge?

23 A Yes, it is.

24 Q Could you do as was done earlier, just a
25 quick summary, very quickly, of your testimony?

1 MR. ZISCHKE: I thought the order had
2 specified we were not doing that on direct.

3 HEARING OFFICER BOUILLON: Yeah. Don't
4 assume that the Committee hasn't at least glanced
5 through his testimony. We are aware of the issues
6 and we are aware of Burney Resource Group's
7 position on the issues.

8 The only way we're going to finish is we
9 are accepting his testimony as it is written. If
10 he has corrections to it, we'd like to hear those
11 specifically with regard to page and line. But
12 other than that, we can proceed to cross-
13 examination.

14 MS. CROCKETT: Okay. I will offer him
15 for cross-examination.

16 HEARING OFFICER BOUILLON: Mr. Zischke.

17 MR. ZISCHKE: Thank you.

18 CROSS-EXAMINATION

19 BY MR. ZISCHKE:

20 Q Mr. Gilbert, good afternoon --

21 HEARING OFFICER BOUILLON: Keeping in
22 mind that we're going to get to Dr. Rose.

23 MR. ZISCHKE: Yes, I'm going to be -- I
24 think I'll be fairly brief.

25 //

1 BY MR. ZISCHKE:

2 Q You're employed by Goal Line
3 Technologies, is that correct?

4 A That's correct.

5 Q And your title is Director of Market
6 Development?

7 A That's correct.

8 Q So you play a significant role in the
9 marketing of SCONOX technology?

10 A I'd like to convince my bosses of that,
11 yes.

12 Q In the testimony that was written how do
13 we distinguish between parts that you or your two
14 other co-panelists might have written, or parts
15 that are based on Phyllis Fox's testimony?

16 A I'm sorry, I missed the first part of
17 the question.

18 Q Well, maybe I'll back up. You indicated
19 in response to Ms. Crockett's question you were
20 involved in the preparation of the testimony. Who
21 wrote it?

22 A It was a joint effort between Goal Line
23 representatives with assistance from Nora
24 Chorover.

25 Q And in the testimony there is

1 significant reliance on statements of testimony by
2 Phyllis Fox in the Elk Hills proceeding, is that
3 correct?

4 A That's correct.

5 Q Did you retain an independent air
6 quality expert to review Phyllis Fox's testimony
7 in Elk Hills?

8 A Not that I'm aware of.

9 Q Does Goal Line Technologies own the
10 patent of the SCONOx catalyst?

11 A I'll preface my response by saying that
12 I've been with the company six months, and I'm not
13 absolutely certain on all of the intricate
14 details. My understanding is that Goal Line
15 actually owns 12 patents relative to SCONOx.

16 Q Is Goal Line Technology the sole
17 licensor for the technology if someone wants to
18 use it, either itself, or through some other
19 party?

20 A I'm not quite sure I understand your
21 question, but let me take a shot here. Goal Line
22 sells that technology into power plants less than
23 100 megawatts.

24 For plants above 100 megawatts there is
25 an exclusive agreement with Alstom to represent

1 SCONox in their operations and building plants.

2 Q Did Goal Line Technologies provide a
3 proposal to Three Mountain Power for a SCONox
4 system?

5 A My assumption is they did, but actually
6 I believe that predated my hire.

7 Q If I could direct your attention to
8 exhibit 21 of our air quality direct testimony, do
9 you have that with you?

10 A No, I don't.

11 Q There's a copy there of the proposal
12 that was provided. Who was that proposal
13 submitted by?

14 A I'm assuming we're looking at the ABB
15 Alstom Power proposal dated May 5, 2000?

16 Q Yes.

17 A That's from Rick Ogema of Alstom.

18 Q In the introduction to your testimony
19 you claim that SCONox should be required to reduce
20 PM10 emissions from the facility. Are you
21 familiar with the ABB Alstom Power proposal to
22 Three Mountain Power offering the SCONox system?

23 A I've seen bits and pieces of it. I have
24 not reviewed the entire document.

25 Q Is it true that the ABB Alstom proposal

1 did not provide a guarantee on PM10 emission
2 reduction?

3 A I am not certain whether or not they
4 offered a guaranteed reduction or not. I hate to
5 ask a question, can I do that?

6 In our business with SCONOx when you're
7 talking about PM10, there are issues related to
8 PM10 reductions which go to the issue of secondary
9 particulate in an SCR application versus PM10
10 reductions from SCONOx, itself.

11 SCONOx does not use any ammonia, hence
12 there are no secondary particulates. And so your
13 question might actually go to the issue of whether
14 or not SCONOx reduces pollution, or particulate,
15 rather, above and beyond what SCR can do.

16 And if that's your question, the answer
17 is absolutely it can.

18 Q Let me direct your attention, if I may,
19 to page 4-11 of that proposal, and then I'll give
20 it back to you.

21 At the bottom of that page there's a
22 note 4 covering emissions of particulate. Is that
23 a guarantee or an estimate, in your opinion?

24 A I haven't seen this, I have no idea. I
25 haven't reviewed this document.

1 Q In your testimony you claim that SCONox
2 should be required to achieve improved NOx
3 reductions. Isn't the guaranteed emission rate
4 proposed by ABB Alstom Power 2.0 ppm for a three
5 hour rolling average equivalent to the emission
6 rate of 2.5 ppm for a one hour average that's been
7 determined by the County Air District to be best
8 available control technology?

9 A That's a topic for debate. There is
10 no -- I don't think there's any true right or
11 wrong answer there. It depends on your position.
12 There's some folks that will tell you that a one
13 hour sampling period is to their liking, as
14 opposed to a three hour sampling period.

15 The 2 versus 2.5 just goes to the amount
16 of time that you want to grab your sample. The
17 more time you have, if you will, the less
18 stringent. Did I say that right? I got
19 sidetracked there mentally.

20 The point here is the 2 versus 2.5 is
21 relative to the sampling period. One hour versus
22 three hours.

23 Q Is the guaranteed emission rate for NOx
24 the same emission rate proposed for the Three
25 Mountain Power Plant with selective catalytic

1 reduction?

2 A My understanding is that it is.

3 MR. ZISCHKE: Thank you, that's all.

4 HEARING OFFICER BOUILLON: Mr. Ratliff.

5 MR. RATLIFF: Okay, thank you.

6 HEARING OFFICER BOUILLON: That was very
7 quick for which I again thank you.

8 CROSS-EXAMINATION

9 BY MR. RATLIFF:

10 Q Mr. Gilbert, can you tell us again what
11 your position is at Goal Line? I didn't catch
12 that.

13 A I think my business card says Director
14 of Marketing. I was hired six months ago to act
15 as a regulatory liaison. I have background in air
16 quality regulatory work; have worked ten years as
17 a public servant in air quality.

18 I belong to the Marketing Group, but I
19 don't -- I wouldn't say that I sell. Most people
20 perceive marketing as selling. I really don't do
21 that. I'm just trying to get the information out
22 into the marketplace and to regulators.

23 Q Regarding SCONOX, are there any
24 facilities in California that use that technology?

25 A Yes, there are. The federal facility in

1 Vernon, California has used SCONOx. I believe
2 they commissioned in '96. They established the
3 emission rate that will apply to Three Mountain
4 Power, first in '97, then in '98 dropped it again.

5 And in the parlance, we are considered
6 BACT LAER for NOx on large gas turbines.

7 Q What is the size of that facility in
8 megawatts?

9 A The size of the facility is nominally 32
10 megawatts.

11 Q Are there any facilities that have been
12 built with Frame 7, F size turbines with SCONOx?

13 A Not that I'm aware of. We have
14 prospects in the wings, however. There are no
15 facilities that I'd point to with data.

16 Q Regarding the testimony, other portions
17 of your testimony that don't have to do with
18 SCONOx, as was pointed out earlier there's a
19 strong resemblance between the testimony submitted
20 by Goal Line and that of Phyllis Fox in a prior
21 proceeding.

22 Did you prepare the testimony regarding
23 SCONOx?

24 A Did I, personally?

25 Q Yes.

1 A I helped. There are three authors to
2 that document.

3 Q And the portions of the testimony that
4 dealt with ammonia slip, did you prepare that
5 portion of the testimony, as well?

6 A I assisted with that, also.

7 Q When you say you assisted, does that
8 mean that you conferred with other people who
9 actually wrote the testimony, or that you read the
10 testimony, or --

11 A It was a collaborative effort, but I
12 would say that I actually have probably I'm going
13 to guess 70 percent of the work in on that
14 document.

15 Q Okay.

16 A Most of that what you see there is my
17 writing.

18 Q Okay.

19 A It's my work.

20 Q And on page 21 of that testimony there
21 is a portion of the testimony which deals with
22 what's been called the met data issue.

23 A Correct.

24 Q Is that your testimony, also?

25 A Yes, it is.

1 Q And you wrote that portion of the
2 testimony?

3 A Yes, I did.

4 Q And the reference in that testimony is
5 to 40CFR parts 51 and 52 regarding the need for
6 met data?

7 A Yes.

8 Q Would I be correct in stating that there
9 are other documents besides 40CFR51 and 52 which
10 pertain to the protocol for doing acceptable
11 meteorological data?

12 A Not that I'm aware of.

13 Q There are no documents that are
14 referenced in those parts which refer to
15 meteorological data and what is the norm that
16 you're familiar with?

17 A Are you asking me whether -- could you
18 please clarify your question?

19 Q Yes.

20 A Are you asking me to verify what I put
21 in that section on page 21?

22 Q Right, parts 40CFR parts 51 and 52.

23 A Okay.

24 Q And I guess my question is, is the
25 entire methodology for doing an air quality

1 analysis with met data, is it contained in those
2 parts, or are there external documents as well
3 that are referenced in those parts?

4 A No, that's the documents that I focused
5 on. I'm not aware of any others.

6 Q Okay. Are you aware that the applicant
7 in this case did an analysis with meteorological
8 data on more than one manner?

9 A I've read probably more than I would
10 ever care to admit to on this case. I suspect
11 that I am aware of that. I do believe -- I think
12 I'm sort of trying to read into your question a
13 little bit, but I think I understand what you're
14 getting at.

15 There was earlier testimony about the
16 advanced model preceding the screen model?

17 Q Right.

18 A Is that what you're referring to?

19 Q Right.

20 A Yes.

21 Q So you're aware that this analysis was
22 actually redone at least once after discussions
23 with the staff?

24 A This analysis meaning?

25 Q The analysis using the meteorological

1 data to determine worst case impacts.

2 A I'm aware that that's their position. I
3 don't believe it complies with what I've got there
4 in the paragraph on page 21 relative to 40CFR.

5 Q Are you aware that the staff contacted
6 the EPA, Region IX Air Quality Unit to determine
7 whether or not additional work needed to be done,
8 other than what the applicant had done?

9 A I think I may have talked about two
10 weeks ago to somebody at the EPA and raised this
11 issue, whether or not that had ever been
12 researched. And the person I spoke with, I'm a
13 little hedgey on this recollection because I
14 talked to Tuan about this, from CEC. And then
15 talked briefly also to -- Tuan's giving me a funny
16 look. Maybe it was your counterpart at the EPA.
17 I'm sorry.

18 There are two people that I confuse
19 between EPA and CEC. They're both Oriental and I
20 just tend to -- I've been doing so much work on
21 this case it's just kind of jumbled.

22 My recollection is that I did bring this
23 issue to -- I thought I'd talked to Tuan about it.
24 But I believe I did bring it to EPA and their
25 response was, at least the person I was talking

1 to, was that they really weren't aware of this
2 issue at all.

3 And I said, you know, it's going to come
4 up. And they said, well, not really. I'm sorry I
5 can't be any more helpful than that.

6 Q Going to another part of your testimony,
7 let's return to page 2 of your testimony. We have
8 three formulas on the page taken from Phyllis
9 Fox's testimony which indicate the manner in which
10 ammonia slip is formed, according to this, by
11 secondary pollution.

12 You've already described secondary
13 ammonia slip pollution, I think.

14 A If I could correct you, I think you said
15 ammonia slip is formed. You meant ammonia related
16 secondary particulate.

17 Q You're right. And can you tell us what
18 secondary particulates are?

19 A Secondary particulate is particulate
20 which forms downstream of the source. In this
21 case, the turbine emits precursors, if you will,
22 which then, in combination, create secondary
23 particulate downstream of the source of the engine
24 of the turbine, itself.

25 And that can happen with constituents

1 which are in the exhaust stream. It can also
2 happen with constituents which are in part from
3 the exhaust stream, and then in part from
4 materials in the ambient air.

5 Q And in those formulas on that page, two
6 of the formulas have SO3 as part of the formula.
7 When that SO3 comes out of the stack, is it a gas?

8 A You know, I'm going to defer to Phyllis
9 Fox on this, on the basis of her previous
10 testimony. I'm not a chemist. And I frankly am
11 not really interested in getting into chemistry
12 here. Not to be evasive, but I flat don't feel
13 confident.

14 Q So this was really not your testimony,
15 this was Phyllis Fox's testimony, is that correct?

16 A We pulled from the record. If you want
17 to get into intricate detail in chemistry I'm not
18 going to be able to answer your questions.

19 Q Okay.

20 A The SO3, as I'm aware, goes out in
21 gaseous form.

22 Q Regarding the assumptions in this
23 testimony, it appears that there is an assumption
24 that all of the ammonia that is emitted by a
25 project would be converted into particulates

1 downstream in some form, secondary particulates,
2 is that correct?

3 A Previous testimony from Phyllis Fox on
4 the Elk Hills case is quoted here. And I think
5 you will see that there is language which says is
6 up to. Is up to. Does not mean that that's all.

7 Q Where are you referring to right now?

8 A I believe on the issue of 84.1 tons on
9 the second page. I'm sorry, on the third page,
10 second paragraph. You'll see that under equation
11 3, up to 84.1 tons per year of ammonium nitrate,
12 secondary particulate is formed.

13 Q And that up to is assuming 100 percent
14 conversion, is that correct?

15 A I would assume that that's what Phyllis
16 Fox was doing there with that calculation. I
17 can't speak to the issue of secondary particulate
18 formation. It is absolutely an inexact science,
19 if not an art. And I think that you need to be
20 very careful about your assumptions about whether
21 or not that particulate, the secondary
22 constituents, precursors, if you will, are going
23 to form particulate.

24 Q Was Phyllis Fox -- I'm sorry, go ahead.

25 A The point here is that you cannot put

1 your finger directly on -- there is no direct
2 cause and effect relationship between the
3 emissions in the secondary slip from SCR catalyst,
4 and how much ultimately particulate you can count
5 downstream.

6 There are a tremendous number of
7 variables involved in that process, many of them
8 obviously outside the permitted facility. The
9 regulations in air quality really don't even speak
10 to secondary particulate formation, and for good
11 reason. It's because it's an absolutely inexact
12 science.

13 Qualitatively we absolutely, I am
14 convinced, we accept that there is secondary
15 particulate formation. If you're going to try and
16 focus down to a cause and effect analysis, come up
17 with a precise number, you're never going to get
18 there. At least not with the technology that we
19 have and the methodologies that we use today.

20 Q You stated that you have to be very
21 careful about what you assume for secondary
22 formation. Do you think it's being very careful
23 to assume 100 percent conversion?

24 A I think that this goes to the issue of
25 how you want to protect the public. If you have

1 reasonable doubts about what's in the inventory,
2 or that you have reasonable doubts as to what
3 processes could control secondary particulate
4 formation, specific to the actual facility here at
5 TMP, then I think it's fair game to raise the
6 issue.

7 You need to look at what could be a
8 worst case analysis or scenario. And take that
9 into account. And where you ultimately arrive,
10 what number you arrive at is up for grabs.

11 My sense is, my perspective is that the
12 secondary particulate issue was essentially
13 ignored in Three Mountain. And as a result we had
14 to use terms like up to 84.1 tons, for example.
15 And I say we, I'm really just piggy-backing on the
16 work that was done at Elk Hills.

17 Nonetheless, it's to get your attention,
18 and it's to say that there may be issues above and
19 beyond what you're really focusing on here.

20 Q Are you aware of any studies which would
21 support 100 percent conversion rates?

22 A I'm not.

23 Q The testimony also includes a footnote
24 on page 2 and citations to several studies. Have
25 you read those papers?

1 A I've scanned some of those papers. I've
2 not read front to back. By the way, they are in
3 this document.

4 Q I understand. I believe one of them is
5 not. I believe the one on ammonium sulfate and
6 bisulfate formation is not included within the
7 document.

8 A You've obviously paid more attention to
9 it than I have. I can't explain that.

10 Q Have you read that document?

11 A I've read parts of the documents that
12 are in here. And I have not read all of those
13 documents.

14 Q Then I'll --

15 A Again, those were cited from Phyllis
16 Fox's work on Elk Hills.

17 Q Do you know what kind of equipment that
18 document was referring to in that study?

19 A Which study? Which document?

20 Q Ammonium sulfate and bisulfate formation
21 in air preheaters.

22 MS. CROCKETT: May I interject at this
23 point, a request?

24 HEARING OFFICER BOUILLON: Excuse me?

25 MS. CROCKETT: I have a concern that

1 counsel is focusing on technical issues that have
2 been gleaned from other documents, and the witness
3 has already said that he has not done all of the
4 testimony.

5 We have submittals by three different
6 people. We drew from testimony. And I feel that
7 counsel is trying to imply that the witness is
8 trying to do everything that's in this document.

9 HEARING OFFICER BOUILLON: If that --

10 MR. RATLIFF: Well, I think that's my
11 point exactly.

12 HEARING OFFICER BOUILLON: Excuse me.

13 (Laughter.)

14 HEARING OFFICER BOUILLON: If a witness
15 has nothing to do with a particular statement, he
16 can say so.

17 MR. GILBERT: Yes, the reference is to
18 the Elk Hills case there, and it's not quoted,
19 it's 255 pages. It's not contained in this
20 document. It's docketed apparently at CEC on the
21 Elk Hills case.

22 And, no, I have not read it. I may have
23 read excerpts from it.

24 MR. RATLIFF: Then I'll forego any
25 further questions on that document, or any of the

1 others, for that matter.

2 I think my cross-examination is
3 finished, thank you.

4 HEARING OFFICER BOUILLON: Thank you.

5 Before we continue, I have one thing I'd like to
6 take up right now while this witness is still on
7 the stand.

8 I have a declaration of J. Phyllis Fox,
9 Ph.D., which was docketed on December 15th of this
10 year. It's my understanding that this declaration
11 was obtained to provide a factual basis for the
12 use of some of her work in earlier draft reports
13 which have also been docketed with the Energy
14 Commission.

15 Is it the intention of one of the
16 parties to offer this declaration in evidence?
17 The declaration and the statement of
18 qualifications of J. Phyllis Fox?

19 MR. ZISCHKE: I believe this declaration
20 deals with water, and doesn't have anything to do
21 with the testimony we've just been discussing.

22 HEARING OFFICER BOUILLON: You do?

23 MS. CROCKETT: Mr. Zischke is correct.

24 HEARING OFFICER BOUILLON: Mr. Zischke.

25 MR. ZISCHKE: I said I believe that the

1 testimony deals with water; it doesn't have
2 anything to do with this witness' reliance on
3 testimony in another proceeding by Phyllis Fox.

4 MS. HOLMES: Staff is preparing to move
5 that that declaration be moved into evidence when
6 we conclude the water portion of the hearings. It
7 provides authentication of some data that staff
8 cited in its water testimony that Dr. Fox
9 collected.

10 MS. CROCKETT: At this point could the
11 Burney Resource Group also state that we would
12 have loved to have had Dr. Fox here, but I'm not
13 quite sure why she's not here, other than that
14 CURE has settled.

15 And we would appreciate having her here
16 to answer some of the questions that data has been
17 used from Elk Hills to support our position. But
18 since she wasn't here, we did not have that
19 choice.

20 Unfortunately it doesn't allow a clear
21 and concise explanation of all the data that's
22 been presented.

23 HEARING OFFICER BOUILLON: I will note
24 for the record that Burney Resource Group did
25 contact me and request a subpoena for the presence

1 of Dr. Fox. That request for a subpoena was
2 opposed by both Dr. Fox, herself, who is, I
3 believe, someplace in Pennsylvania, I'm not sure.
4 And by CURE, the organization and intervenor who
5 had employed her.

6 That request for a subpoena was denied.
7 She is not going to be here. Relying on
8 information she developed as a basis for an
9 opinion is allowable as long as proper notation is
10 made of that.

11 But we're not -- this Committee and this
12 Commission is not in the business of providing
13 expert witnesses for intervenors. It's up to them
14 to provide their own witnesses, much like you have
15 provided Mr. Gilbert and your others.

16 That's the explanation for that.

17 Mr. Gilbert, I have a couple of
18 questions for you with regard to your testimony.

19 EXAMINATION

20 BY HEARING OFFICER BOUILLON:

21 Q Turning to page 21, your conclusion
22 specifically, the sum and substance of your
23 testimony is that you think the Committee should
24 require the use of SCONOX as a pollution reduction
25 technology, is that correct?

1 A I think the SCONOx is obviously superior
2 to SCR for multiple pollutant controls.

3 Q Do you think that in your testimony, and
4 I speak of your testimony, I'll refer to the
5 document. I realize it's the testimony of three
6 people.

7 A Yes.

8 Q Do you think that that, with all of the
9 other testimony that has been put into evidence,
10 supports the use of SCONOx? Supports a finding
11 that SCONOx is required?

12 A I think SCONOx -- that's a good
13 question. I think SCONOx should be -- let me put
14 it this way. If SCONOx were applied to TMP there
15 would be significant emission reductions. You'd
16 have no secondary particulate issues. You'd have
17 no hazardous ammonium emission issues.

18 I won't bore you with details, but
19 suffice it to say that SCONOx would obviously be a
20 superior advantage.

21 Q And for purposes of making such a
22 finding, do you think that the Commission has
23 sufficient meteorological data in front of it to
24 do that?

25 A I personally think you don't. I'm

1 responsible for digging that information out on
2 40CFR. The way I read that information is that
3 the District, when they accepted their PSD
4 delegation, agreed to use the most recent modeling
5 guidance, that guidance coming from EPA.

6 My read on what happened at Shasta is
7 that when they did their delegation back in '97
8 they referenced OAQPS, I forget the numbers after
9 it, as sort of what they were going to go to for
10 their modeling guidance.

11 In fact, what I've been told is that
12 that guidance was already outdated. That, in
13 fact, appendix W, which is referenced here, had
14 come in prior to that event in '97.

15 Nonetheless, that guidance is
16 controlling, in my opinion, therefore, and in fact
17 you'll notice that it even quotes, as an example,
18 a 500 megawatt plant. If you don't have a years
19 worth of site specific data you have to get that
20 data.

21 The problem with Brush Mountain is that
22 it is not representative. It does not meet what
23 we in the air business would have called QAQC
24 control, quality assurance quality control
25 criteria.

1 Now that Brush Mountain CEF facility
2 tanked on a number of occasions, and the actual
3 facility, itself, or the day that the equipment
4 pooped out, but the actual facility, itself, was
5 not heated. You're not going to get good data out
6 of that facility.

7 So, from a, I think from a spirit of the
8 law perspective, you need to do better than Brush
9 Mountain data.

10 Secondly, as a procedural issue, my read
11 is that you have to do one year of data collection
12 specific to the TMP project. You cannot use
13 something that's from several miles away, and with
14 data which is essentially bogus data in my
15 opinion.

16 Q And that's for SCONOX or the
17 technology --

18 A Absolutely --

19 Q -- proposed by applicant?

20 A Absolutely, and I will be the first to
21 admit, I've been in this job for six months, but I
22 still consider myself a public servant. I did it
23 for so long and it's hard for me to jump out of
24 that.

25 And I do absolutely have a commitment to

1 public service and protecting public health and
2 safety. And so that's why I tend to err to the
3 side of going after the best data you can get, and
4 the best control technology you can buy.

5 HEARING OFFICER BOUILLON: Mr. Zischke,
6 do you have anything to follow up?

7 MR. ZISCHKE: Nothing further.

8 HEARING OFFICER BOUILLON: Mr. Ratliff?

9 MR. RATLIFF: No.

10 HEARING OFFICER BOUILLON: Any redirect?

11 MS. CROCKETT: Yes, thank you. I will
12 make it quick.

13 REDIRECT EXAMINATION

14 BY MS. CROCKETT:

15 Q Mr. Gilbert, are there any -- you stated
16 that there would be no ammonia slip and secondary
17 PM10 would be gone.

18 But on the other criteria pollutants,
19 what would happen to carbon monoxide with SCONOX?

20 A I believe you have a 5 ppm limit --

21 Q Four.

22 A I'm sorry, what were we talking
23 about, --

24 Q Excuse me, carbon, CO.

25 A CO, okay.

1 Q I think it's been limited at 4, is that
2 correct?

3 A Okay, we started out at 10. I think we
4 rolled down --

5 Q Not ammonia, carbon monoxide.

6 A Carbon monoxide.

7 Q Okay, I think we're permitted at 4? Am
8 I at the correct level?

9 A It's all right, we won't get hung up in
10 the details here.

11 Q Okay.

12 A The concept is we control the SCONox
13 down to sub 1 ppm CO. We control it to sub 1 ppm
14 on NOx. We set the limit that SCR now runs to.
15 And trust me, if we hadn't set it in '98, they
16 wouldn't be there now. They'd still be up at 5 or
17 10 ppm NOx.

18 The point here is that we control much
19 more effectively than SCR. We control over a much
20 wider range of pollutants. We have PM10
21 reduction. We don't create any secondary PM10
22 from ammonia slip.

23 We reduce PM10, we reduce CO, we reduce
24 NOx, and we control to the tune of 92 to 95
25 percent effectiveness on the toxic air

1 contaminants such as formaldehyde and benzene and
2 acrolein.

3 And by the way, that's in AP42, which is
4 the guidance from EPA.

5 So, I mean sort of working this a little
6 bit too much here, but the point is we can control
7 a much lower rate than the TMP project is
8 permitted at.

9 It's not because we didn't want to. It
10 was because the project was not bid spec'd to a
11 lower number.

12 Q Would you clarify that?

13 A There was some discussion, I believe,
14 actually in the FSA that also was not responsive
15 to the request for a bid for TMP, because they had
16 responded with control technology, SCONox, if you
17 will, that would only cover up to 9 ppm inlet
18 when, in fact, they were supposed to go to 15.

19 Alstom's position is that they were
20 never given the information that said go to 15.
21 If they had, they would have easily built that
22 into the system and, in fact, on both coasts
23 SCONox runs at 25 ppm inlet, and reduces to less
24 than 2 ppm.

25 So it's not an issue of whether we can

1 do it. It's an issue of what's bid spec'd to the
2 contractor. In this case it was Alstom.

3 Q There was one other question, I think it
4 was directed to you by Mr. Zischke, and that was
5 with an alternate piece of equipment if there was
6 a failure of SCONOx.

7 Was that addressed to you?

8 A I think you're referring, this is an
9 issue that we hear about frequently in the
10 justifications or reasons for not --

11 HEARING OFFICER BOUILLON: Mr. Gilbert,
12 excuse me, other than whether or not a question
13 was asked -- she hasn't asked you anything about
14 it yet. What's your question?

15 MS. CROCKETT: The question -- the
16 foundation, as I'm hearing, I had heard that that
17 was one of the reasons that SCONOx was not
18 accepted, and it was just they asked -- I'm trying
19 to find out if it had been addressed to Mr.
20 Gilbert so I could redirect on that. And that was
21 my main question.

22 BY MS. CROCKETT:

23 Q Had the justification issue been
24 addressed to you earlier, Mr. Gilbert? By the
25 Three Mountain people.

1 A Justification -- bid specifications
2 issue?

3 Q If SCONOX failed that another piece of
4 equipment would be brought in. Was that asked of
5 you in earlier cross?

6 A Today?

7 Q Yes.

8 A No.

9 Q Then I'm in the wrong area.

10 HEARING OFFICER BOUILLON: I think we're
11 all confused.

12 MS. CROCKETT: I apologize.

13 BY MS. CROCKETT:

14 Q Is there any other, locally are you
15 aware that there's going to be SCONOX put in
16 somewhere?

17 A Yes, I am.

18 Q Would you tell us about it a little bit?

19 A There was an article in the paper here
20 recently, very recently, about a Redding utility
21 buying SCONOX into a power plant.

22 Q Thank you. Is there anything -- are you
23 aware of the differences between the projects?

24 A Pretty good sense of it, yes.

25 HEARING OFFICER BOUILLON: Excuse me. I

1 know you sent that article to my office, and
2 probably elsewhere. I have not read it and I'm
3 not going to because it's not evidence in this
4 case.

5 And to go into the differences between
6 two projects might require as much testimony as we
7 have on the project description of this one. Plus
8 the entire contents of the application for
9 certification.

10 And to ask one witness what the
11 difference in the projects are, I think, would be
12 useless to this Committee.

13 MS. CROCKETT: Okay.

14 HEARING OFFICER BOUILLON: We are aware
15 that SCONOX has been used, if that's what you're
16 trying to establish.

17 MS. CROCKETT: Well, actually counsel
18 for staff had asked if he was aware of all the
19 SCONOX projects in California. And I was just
20 going to specify into the Redding area, which we
21 have done. Thank you.

22 HEARING OFFICER BOUILLON: You did ask
23 that question, and he did answer that question.

24 MS. CROCKETT: Thank you. I think at
25 this point -- I have one more question and that

1 was in the earlier parts when we were having Mr.
2 Gilbert sworn in, I did not ask him about his
3 evaluation of the Hat Creek project.

4 BY MS. CROCKETT:

5 Q And I would like to ask him if he's
6 looked at the EIR, and if he's aware of the
7 project. And if he has any opinions on the
8 project as it deals with cumulative impacts.

9 A Do I get three questions at once there?

10 Q You get all three at one time.

11 A Okay, --

12 Q We're in a hurry.

13 A I'm going to forget the last two, no
14 doubt. I have not seen the EIR for Hat Creek, or
15 I believe it's actually a DEIR from --

16 Q No, it is an EIR.

17 A Oh, has it gone to -- okay, I've heard
18 about the project. I've had discussions, actually
19 you and I have talked about this in the past. And
20 who else have I talked with this about. I think
21 probably this has been discussed in the context of
22 the Burney case.

23 Q You've heard the various witnesses give
24 their opinion. The Hat Creek project has been
25 permitted in the first stage of two stages at a

1 570 roundtrip emission -- well, actually impact
2 with trucks for the project.

3 Your background is --

4 HEARING OFFICER BOUILLON: Ms. Crockett,
5 I'm going to interrupt you. I think he said he
6 has not seen the document. Are you going to ask
7 him about?

8 Let me clear that up. Have you seen the
9 document?

10 MR. GILBERT: No, I have not.

11 HEARING OFFICER BOUILLON: You're not
12 going to ask him any questions about it.

13 MS. CROCKETT: Okay, thank you. I am
14 done with the witness.

15 MR. ZISCHKE: I have one further
16 question.

17 HEARING OFFICER BOUILLON: Go ahead.

18 RECROSS-EXAMINATION

19 BY MR. ZISCHKE:

20 Q The proposed plant in Redding that was
21 discussed in one newspaper article, is it true
22 that was a 43 megawatt plant?

23 A It's nominally that capacity.

24 MR. ZISCHKE: Thank you.

25 HEARING OFFICER BOUILLON: Mr. Ratliff?

1 MR. RATLIFF: No.

2 MS. CROCKETT: There's a correction on
3 that. I think -- may I ask Mr. Gilbert about that
4 plant?

5 HEARING OFFICER BOUILLON: You can ask
6 him about whether or not it was 43 megawatts. Do
7 you want him to change his answer?

8 MS. CROCKETT: I wanted to clarify was
9 the turbine 43, or is the plant 43.

10 HEARING OFFICER BOUILLON: That's a good
11 question.

12 BY MS. CROCKETT:

13 Q Mr. Gilbert?

14 A And that's unfortunately a question that
15 I'm confused about. We actually came -- I came to
16 Redding probably five or six months ago to discuss
17 SCONOX with the Redding utility folks here.

18 They had a couple of different plans on
19 the table. We weren't, at that point, clear about
20 what they were going to be doing with SCONOX.

21 Now, subsequent to our involvement
22 Alstom came in and took over that project. And so
23 I can't truthfully, my understanding is that it's
24 around 50 megawatts, although I'm not absolutely
25 positive. That's really between Alstom and the

1 utility here.

2 I am absolutely certain though, from
3 what I've been told by all parties, that SCONOX
4 will be the control technology for that plant.

5 MS. CROCKETT: Thank you.

6 HEARING OFFICER BOUILLON: Mr. Gilbert,
7 wait just a minute, make sure we get everything in
8 here.

9 Ms. Crockett, are you offering the
10 testimony of -- the panel testimony of Greg
11 Gilbert, Alan Bedwell and Boris Reyes?

12 MS. CROCKETT: Yes, I am.

13 HEARING OFFICER BOUILLON: All right, we
14 will mark that exhibit number 77.

15 Mr. Zischke, any objection?

16 MR. ZISCHKE: No.

17 HEARING OFFICER BOUILLON: Mr. Ratliff?

18 MR. RATLIFF: No.

19 HEARING OFFICER BOUILLON: It will be
20 admitted.

21 MR. ZISCHKE: And that includes the
22 errata?

23 HEARING OFFICER BOUILLON: Excuse me?

24 MR. ZISCHKE: That includes the errata
25 sheet to their testimony, correct?

1 HEARING OFFICER BOUILLON: I don't know
2 that I have errata.

3 MS. CROCKETT: An errata was submitted
4 to the POS list. It has to do with cost
5 effectiveness, I think, is the primary.

6 Also, did we need to also discuss the
7 emission inventory submission at this time for
8 exhibits?

9 HEARING OFFICER BOUILLON: Excuse me a
10 second. I do have a document entitled, errata to
11 corrected panel testimony. What I'm not sure I
12 have is corrected panel testimony. The first one
13 I have it just says panel testimony. And then I
14 have errata to correct it.

15 MS. CROCKETT: The only correction that
16 we had submitted was a verbal correction that
17 there was a mistake on the calculations and the
18 sulfur content of the natural gas.

19 HEARING OFFICER BOUILLON: And that's in
20 a separate document?

21 MS. CROCKETT: No, it was a verbal
22 correction --

23 HEARING OFFICER BOUILLON: Was that done
24 by letter or something?

25 MS. CROCKETT: -- done at this time

1 here at --

2 (Pause.)

3 MR. GILBERT: I think I can clear this
4 up. My testimony today was preceded by a question
5 about any errors that I was aware of. With
6 respect to that, I think that's what Ms. Crockett
7 is talking about.

8 We have previous written errata which I
9 believe you have before you that was submitted.

10 HEARING OFFICER BOUILLON: I'm going to
11 approach the witness, myself, and make sure of the
12 documents that I have marked --

13 (Pause.)

14 HEARING OFFICER BOUILLON: There is
15 apparently some -- looking at the errata to the
16 corrected panel testimony, I'll show that to the
17 witness.

18 And so that I can reach a microphone I'm
19 going to lean over your shoulder. That refers to
20 panel testimony dated November 17th.

21 The panel testimony that I have is dated
22 November 15th. And it just says panel testimony.
23 And this makes reference to errata to the
24 correction panel testimony.

25 I don't believe that this Committee has,

1 in fact, the corrected panel testimony dated
2 November 17th.

3 MS. CROCKETT: The November 17th copy
4 was the actual panel testimony. And then we have
5 November 20th errata.

6 HEARING OFFICER BOUILLON: All right.
7 Looking at what I have as a second page, the
8 witness has explained to me that the second page
9 of what I have marked as exhibit 77, is, in fact,
10 dated November 17th. Even though somehow it was
11 transmitted by Burney Resource Group on the 15th.

12 And it is not entitled, corrected panel
13 testimony, but simply panel testimony. So I am
14 going to assume that these are two documents in
15 question which we have marked 77 and now 78 for
16 the errata.

17 And unless I hear an objection I'm going
18 to -- we'll admit exhibit 78, also.

19 Mr. Zischke?

20 MR. ZISCHKE: That's correct.

21 HEARING OFFICER BOUILLON: Mr. Ratliff?

22 MR. RATLIFF: Fine.

23 HEARING OFFICER BOUILLON: Is there
24 anything else with this witness, Ms. Crockett?

25 MS. CROCKETT: No. And then I would

1 wish to move the testimony of the panel testimony
2 into evidence, along with the emission inventory
3 and the altered table 3.

4 MR. ZISCHKE: And we object to the
5 emissions inventory table 3.

6 HEARING OFFICER BOUILLON: Would you
7 like to amplify your objection?

8 MR. ZISCHKE: Yes, I would. I want to
9 begin by saying, you know, there's been a great
10 deal of study of air and I think it's a credit to
11 the amount of study that's been done, that the
12 witness has been able to answer a last minute
13 question.

14 I think there are several defects in
15 those materials. It's been testified that they
16 weren't verified. I don't think there's a
17 foundation for them.

18 There have been some late filings here,
19 but I'm trying to figure the word I want to use.
20 I think egregious is the polite one.

21 There was an order out for testimony
22 prefiled on November 17th. We were not provided
23 any opportunity other than the questions asked
24 today, which I think have disposed of the issue.

25 But we were not provided an opportunity

1 to review this in advance in accordance with the
2 order. And again, it has been testified to that
3 it wasn't verified. I don't think there's an
4 adequate foundation, and it should be excluded.

5 HEARING OFFICER BOUILLON: Mr. Ratliff,
6 do you have any comment?

7 MR. RATLIFF: No.

8 HEARING OFFICER BOUILLON: Ms. Crockett,
9 would you like to respond to that?

10 MS. CROCKETT: Yes, I would. The
11 document has been identified by the Air Pollution
12 Office from Shasta County. It has been admitted
13 into evidence, that it is not refined data, but
14 raw data from Shasta County.

15 Nonetheless, it is pertinent to the
16 evaluation of growth in the Burney basin and
17 relevancy of data that we used it as a table to
18 extend -- or used it to extend that table, would
19 be just evidence brought in, the table was
20 submitting. We saw in our review of information
21 it did not include the 1998.

22 And then it's not that staff and the
23 applicant have not been aware of the 1998 emission
24 inventory. In fact, BRG on many occasions brought
25 it up. Mr. -- stipulated, or stated that he, in

1 fact, had referred to it. It is there. And they
2 are aware of it.

3 And we were just using it to show that
4 the data may not be complete.

5 MR. ZISCHKE: I would say, you know, we
6 noted in our prehearing conference statement there
7 was some reference to exhibits yet to be provided.
8 And that that needed to be cleared up.

9 I think it was established in the
10 testimony, this has long been available. If they
11 want to introduce it, it is their obligation to
12 provide an advance to the parties in accordance
13 with the Committee's order.

14 (Pause.)

15 MR. GILBERT: Excuse me, Mr. Bouillon,
16 can I leave?

17 HEARING OFFICER BOUILLON: The Committee
18 in this case is going to --

19 MR. CROCKETT: Mr. Bouillon, can he --

20 HEARING OFFICER BOUILLON: Excuse me.

21 MR. CROCKETT: -- can he be excused?

22 MR. GILBERT: May I go?

23 HEARING OFFICER BOUILLON: Yes.

24 MR. GILBERT: Thank you.

25 (Laughter.)

1 HEARING OFFICER BOUILLON: I was
2 thinking we might need you for a further
3 discussion about these exhibits, but we do not.

4 MR. GILBERT: Okay, thank you.

5 HEARING OFFICER BOUILLON: If we're
6 going to exhibit 74, the extended table, I find
7 that there is a lack of foundation -- the
8 Committee finds that there's a lack of foundation
9 for that. And that, in fact, it is such a
10 confusion of apples and oranges, that it, in
11 itself, will not be admitted as evidence, based on
12 a lack of foundation.

13 With regard to exhibit 75, the Committee
14 finds that there may be some relevant information
15 in there that there has been a sufficient
16 foundation to demonstrate that it is a record of
17 the Air Quality District, Air Quality Management
18 District, and that is a sufficient foundation to
19 establish it as a public record.

20 There has also been sufficient testimony
21 about the inability to correlate the figures in
22 exhibit 75 with the figures in table 3 of the FSA.
23 But for whatever limited value exhibit 75 has, it
24 will be admitted and the parties are free to try
25 and make an argument that you can compare apples

1 and oranges.

2 And I believe that concludes the
3 testimony on air. Am I missing anything, Mr.
4 Zischke?

5 MR. ZISCHKE: I don't think so, thank
6 you.

7 HEARING OFFICER BOUILLON: Ms. Crockett?

8 MS. CROCKETT: Thank you.

9 HEARING OFFICER BOUILLON: Mr. Ratliff.

10 MR. RATLIFF: Thank you.

11 HEARING OFFICER BOUILLON: Ms. Praul has
12 a comment she'd like to put on the record.

13 MS. PRAUL: Actually, it's a question of
14 the people who are more familiar with the record
15 in the docket. The question is whether there is
16 any formal filing from the Air Resources Board or
17 the EPA related to this case, either in the record
18 or in the docket.

19 And specifically with respect to the
20 EPA, have they spoken in this record related to
21 how the analysis was done on the PSD delegation?

22 And secondly, ARB, have they put
23 anything in this record related to the
24 acceptability of the PM10 offsets?

25 MR. ZISCHKE: I'm not aware of any

1 filing by ARB or EPA in this record. EPA, through
2 the Air District process, reviewed both the
3 preliminary determination of compliance and the
4 final determination of compliance. But they
5 haven't filed in this proceeding on the record.

6 HEARING OFFICER BOUILLON: We're ready
7 for Dr. Rose.

8 MS. HOLMES: I understand that staff's
9 witnesses --

10 HEARING OFFICER BOUILLON: And it's my
11 understanding --

12 MS. HOLMES: -- testify as a panel,
13 which would be Dr. Rose, Ms. Bond, and Mr.
14 Sapudar.

15 HEARING OFFICER BOUILLON: It is my
16 understanding that they were going to testify
17 together.

18 MS. HOLMES: All three of them, yes.

19 MS. CROCKETT: May we have just a five-
20 minute recess?

21 HEARING OFFICER BOUILLON: Pardon?

22 MS. CROCKETT: Could we have a five-
23 minute recess?

24 HEARING OFFICER BOUILLON: I think that
25 would be appropriate while everyone gets organized

1 anyway.

2 MS. CROCKETT: Thank you.

3 (Brief recess.)

4 HEARING OFFICER BOUILLON: Back on the
5 record.

6 Whereupon,

7 TIMOTHY ROSE, LINDA BOND and RICHARD SAPUDAR
8 were called as witnesses herein and after first
9 being duly sworn, were examined and testified as
10 follows:

11 HEARING OFFICER BOUILLON: Would each of
12 you, starting with Dr. Rose, please identify
13 yourself and state your place of employment?

14 DR. ROSE: Yes, my name is Timothy Rose.
15 I'm employed at Lawrence Livermore National
16 Laboratory as a chemist.

17 MS. BOND: My name is Linda Bond. I'm a
18 hydrogeologist consulting with the California
19 Energy Commission.

20 MR. SAPUDAR: I'm Richard Sapudar; I'm
21 an Environmental Specialist with the California
22 Department of Water Resources working with Energy
23 Commission Staff on this case.

24 MS. HOLMES: Thank you, Mr. Bouillon.

25 MR. TURNER: Mr. Bouillon and

1 Ms. Holmes, with Ms. Holmes' indulgence and your
2 permission, Mr. Bouillon, two housekeeping matters
3 before she begins her direct.

4 First, let me reintroduce myself. It's
5 been a long time since Mr. McFadden introduced me
6 this morning. I'm Mr. Turner, and I'll be
7 handling the water and the biological resources
8 part of the case for the company.

9 And, second, do we have any idea yet how
10 long the Committee intends to proceed tonight?
11 I've got some biological witnesses that I would
12 like to turn loose. And I don't know how long
13 this panel's going to take, or how long our water
14 panel might --

15 PRESIDING MEMBER KEESE: This is going
16 to be it.

17 MR. TURNER: This is going to be it for
18 the night? Because --

19 PRESIDING MEMBER KEESE: That's right,
20 we're going to --

21 MR. TURNER: -- certainly I have no
22 cross-examination for this panel. This may go
23 very quickly.

24 PRESIDING MEMBER KEESE: Once this is
25 over, that's it.

1 MR. TURNER: Fine. Okay.

2 HEARING OFFICER BOUILLON: And tomorrow
3 morning, first thing, of course, we're going to
4 have Ms. Crockett's witnesses.

5 MR. TURNER: Dr. Ellis and --

6 HEARING OFFICER BOUILLON: So if you
7 want to plan accordingly.

8 MR. TURNER: Yes, we will. Thank you.

9 HEARING OFFICER BOUILLON: But we will
10 expect no delay whatsoever.

11 MR. TURNER: Okay, thank you.

12 HEARING OFFICER BOUILLON: All right.

13 MS. HOLMES: While we're dealing with
14 housekeeping matters I have a question about how
15 the Committee wishes to handle the stipulation
16 that staff entered into with Three Mountain.

17 Is that something that you want
18 identified, moved into evidence at some point. Do
19 you want it at the beginning of the testimony or
20 do you want us to wait until we've concluded the
21 water section?

22 HEARING OFFICER BOUILLON: Is this the
23 stipulation that you entered into that I mentioned
24 during preliminary matters this morning?

25 MS. HOLMES: That's right, it's

1 entitled, stipulation between Three Mountain
2 Power, LLC, and Energy Commission Staff, dated
3 December 7, 2000.

4 If there's no objection --

5 HEARING OFFICER BOUILLON: We will mark
6 that as exhibit number 79, stipulation between
7 staff and applicant, only, regarding certain water
8 matters, dated --

9 MS. HOLMES: December 7, 2000.

10 HEARING OFFICER BOUILLON: Do you have
11 any objection to the introduction of that
12 document?

13 MS. CROCKETT: I'm sorry, which document
14 were --

15 HEARING OFFICER BOUILLON: The
16 stipulation between staff and applicant.

17 MS. CROCKETT: No.

18 HEARING OFFICER BOUILLON: Understanding
19 that it does not prejudice any of your rights.

20 MS. CROCKETT: No.

21 HEARING OFFICER BOUILLON: That will be
22 admitted.

23 MR. TURNER: Excuse me, Mr. Bouillon,
24 what number are we admitting now?

25 HEARING OFFICER BOUILLON: 79, the

1 stipulation.

2 MR. TURNER: 79, thank you.

3 MS. HOLMES: Thank you.

4 DIRECT EXAMINATION

5 BY MS. HOLMES:

6 Q Mr. Sapudar and Ms. Bond, did you
7 prepare direct testimony that is included in
8 exhibit 65 on soil and water resources?

9 MS. BOND: Yes.

10 MR. SAPUDAR: Yes.

11 MS. HOLMES: And, Dr. Rose, did you also
12 prepare a direct written testimony that's included
13 in exhibit 65?

14 DR. ROSE: Yes.

15 MS. HOLMES: Were your qualifications
16 included in that testimony?

17 DR. ROSE: Yes.

18 MS. HOLMES: Are there any corrections
19 to the body of the testimony? And by that I mean
20 the testimony excluding the conditions of
21 certification that we'll get to in a moment?

22 DR. ROSE: Not by me.

23 MS. HOLMES: Ms. Bond?

24 MS. BOND: I have three corrections to
25 make.

1 MS. HOLMES: What are they?

2 MS. BOND: On page 79, the third full
3 paragraph there's a fragmented sentence, the
4 aquifer is. That should be deleted.

5 MS. HOLMES: Thank you. What is the
6 second --

7 HEARING OFFICER BOUILLON: I'm sorry,
8 what was the correction?

9 MS. BOND: Just delete the fragment
10 there, the aquifer is. That's in the third full
11 paragraph.

12 MS. HOLMES: What is the second
13 correction?

14 MS. BOND: Second correction is on page
15 90, the very first word should be replaced by the
16 word flow, so instead of l-o-w, it should be
17 f-l-o-w. Very first word on the page.

18 MS. HOLMES: Thank you. And the third
19 correction?

20 MS. BOND: The third correction is on
21 page 102; it's in the second full paragraph, next
22 to the last sentence, the word range of should be
23 ratio between. And the sentence ended
24 prematurely. It should be and the outflow from
25 springs.

1 HEARING OFFICER BOUILLON: Would you
2 read the sentence as it should be corrected?

3 MS. BOND: Certainly. Because of the
4 lack of information, I guess this is actually the
5 second sentence, Because of the lack of
6 information on the apparent complexity of the flow
7 pass within the aquifer, lack of long term
8 information on spring flows, and the lack of
9 information on the response of the aquifer and
10 springs to drought conditions, staff could only
11 provide an approximate ratio between potential
12 reductions in flow to small springs including
13 Crystal Lake, that could be caused by human
14 consumption and project consumption of water and
15 the outflow from springs.

16 So rather than providing a range of
17 potential reductions, it was a ratio between.

18 That's all of my corrections to the FSA.

19 MS. HOLMES: And did you also prepare
20 errata to the conditions of certification that
21 were distributed earlier today?

22 MS. BOND: Yes, I did.

23 MS. HOLMES: Would it be possible to
24 have that document marked as an exhibit?

25 HEARING OFFICER BOUILLON: Yes. I have

1 errata to soil and water resources, conditions of
2 certification, dated December 18th 7:58 a.m.

3 MS. HOLMES: And, Ms. Bond, do you have
4 some typographical corrections to that document?

5 MS. BOND: Yes.

6 HEARING OFFICER BOUILLON: Let me mark
7 it first.

8 MS. HOLMES: Thank you.

9 HEARING OFFICER BOUILLON: That will be
10 exhibit number 80.

11 MS. BOND: Okay, are we ready for the
12 typos?

13 HEARING OFFICER BOUILLON: Go ahead.

14 MS. BOND: Okay. Page 5 there are four
15 bulleted items. The third item, anisotropy comma
16 and, should say anisotropy if possible and.

17 Okay. The next paragraph there's two
18 numbers listed in there, 1 and 2. The first
19 sentence that follows the sentence with those
20 numbered items should read, the only change we're
21 going to make to is the greater than five feet, so
22 it should read, the two monitoring wells shall be
23 used to provide data for the evaluation of
24 anisotropy to the aquifer if the specific capacity
25 tests indicate the drawdown in the project will be

1 equal to or greater than 5 feet. Rather than
2 simply greater than 5 feet.

3 MS. HOLMES: Do you have any corrections
4 to page 6?

5 MS. BOND: Yes, I do. Page 6, let's
6 see, second sentence starts, the CPM shall
7 complete review of the aquifer test report within,
8 delete the word than, so it will just say, within
9 two weeks.

10 The second correction is under soil and
11 water-10, the second sentence. Instead of if the
12 specific capacity test, should say, if both
13 specific capacity tests.

14 HEARING OFFICER BOUILLON: Down here,
15 however if those?

16 MS. BOND: No, I'm sorry. Soil and
17 water-10, second sentence. Right now it says, if
18 the specific capacity --

19 HEARING OFFICER BOUILLON: Oh, I'm
20 sorry.

21 MS. BOND: -- just if both specific. So
22 replace the word the with both.

23 HEARING OFFICER BOUILLON: Change the to
24 those --

25 MS. BOND: No, to both, b-o-t-h.

1 HEARING OFFICER BOUILLON: Okay.

2 MS. BOND: Okay, and in this same
3 paragraph we refer to a date of 30 days after
4 notification. It should be 60 days. And so in
5 two cases we list this 30 days, about in the
6 middle of the paragraph and in the last sentence.
7 So instead of 30, 60.

8 Next page I need to make a clarification
9 in the verification. Second sentence starts, In
10 addition the project owner shall report whether it
11 plans to number one, not operate, or, number two,
12 whether it plans to operate -- oh, excuse me --
13 whether, cross out it plans.

14 So it will say, number two, whether to
15 operate using dry cooling only comma, during --
16 okay. And then also in that sentence we refer to
17 30 days, it should be 60 days.

18 Okay, that's it for that; page number 8,
19 soil and water-12, first paragraph, last sentence.
20 Instead of mitigation for, it should be mitigation
21 of.

22 And my last -- no, not quite last.
23 Bottom of the page under the verification right
24 before soil and water-13, end of the last
25 sentence, the phrase, the compensation is paid.

1 It should instead read, the receipt of written
2 acceptance of the compensation package.

3 HEARING OFFICER BOUILLON: Could you say
4 that again?

5 MS. BOND: Sure. Delete compensation is
6 paid from the end of the sentence, and put in,
7 receipt of written acceptance of the compensation
8 package. Receipt of written acceptance of the
9 compensation package.

10 Did everybody get that?

11 Okay, page 9, second full sentence, it
12 starts, The compensation process and requirements
13 for well or -- delete or, so it will simply say,
14 The compensation process and requirements for well
15 bowl modifications.

16 Last page, two more changes, two more
17 corrections. Okay, under verification, second
18 sentence after the colon, it says, No later than,
19 and instead of four months after the completion of
20 the aquifer test, cross that out. What it should
21 say is 30 days after CPM approval of the well
22 interference analysis.

23 I'll go through that again. Cross out
24 four months after the completion of the aquifer
25 test, and insert 30 days after CPM approval of

1 well interference analysis.

2 Okay, and one last correction. End of
3 the page, last sentence, Thereafter the project
4 owner shall submit, delete -- oh, excuse me.
5 Thereafter the project owner shall submit on
6 March -- it should say by March 31st, and then it
7 continues, an annual report that describes.

8 So, delete the word on, and insert by
9 March 31st.

10 That's it.

11 MS. HOLMES: Does that complete your
12 corrections?

13 MS. BOND: Yes, it does. Thank you very
14 much.

15 MS. HOLMES: And for all the witnesses,
16 with those corrections are the facts contained in
17 the testimony that you are sponsoring true and
18 correct to the best of your knowledge?

19 MS. BOND: Yes, it is.

20 MS. HOLMES: And, Dr. Rose, with respect
21 to your testimony?

22 DR. ROSE: Yes.

23 MS. HOLMES: And do the opinions
24 contained in the testimony represent your best
25 professional judgment?

1 DR. ROSE: Yes.

2 MR. SAPUDAR: Yes.

3 MS. HOLMES: Ms. Bond, I have two quick
4 questions with respect to the errata. Is it your
5 belief that these changes that are contained in
6 the errata are necessary to insure that the
7 conditions of certification will prevent project
8 pumping from causing or contributing to a
9 significant impact?

10 MS. BOND: Yes.

11 MS. HOLMES: And the errata also
12 contained some language that the applicant had
13 presented as an alternative to one of staff's
14 mitigation measures. I believe that you included
15 it in your testimony in order to inform the
16 Committee of what the proposal was.

17 Is it your belief that that proposal is
18 sufficient to prevent significant impacts?

19 MS. BOND: Yes, I did include it to
20 inform the Committee. But I cannot support that
21 condition because of the lack of details which is
22 indicated in my testimony by the underlying blank
23 spaces.

24 MS. HOLMES: Thank you. Ms. Bond has
25 prepared a two-minute summary of her testimony. I

1 know that water is one of the more contentious
2 issues in this case. If the Committee will
3 indulge us, we would have a very brief summary of
4 where we've been and how we got here.

5 HEARING OFFICER BOUILLON: Very brief.

6 MR. TURNER: And, Mr. Bouillon, before
7 she does that might I just offer the applicant's
8 view on the marking of the errata at this point.

9 We're troubled that the errata that
10 we've just been discussing is being offered as
11 sort of staff's final testimony position on this
12 subject.

13 We would have been less concerned if
14 staff were simply making clear that its document
15 that it handed out at 7:58 or whatever time it was
16 this morning, was clearly a reflection of where
17 its thinking was at that time, and that it and the
18 parties, as we had hoped and perhaps still fully
19 expect, were anticipating to continue to work to
20 resolve the remaining issues that are reflected in
21 these particular conditions.

22 But if, indeed it's being offered as
23 staff's final position, I would note one, that
24 we've not had an opportunity to review it, let
25 alone to rebut it or comment on it.

1 And such that to the extent it is
2 proffered as the staff position, we think its
3 introduction at this time is contrary to the
4 direct instructions in your prehearing order that
5 limited supplemental direct testimony to an
6 appropriate discussion of the Hat Creek issue and
7 nothing else.

8 And so consequently I think it's our
9 position that it's inappropriate for the staff to
10 introduce this errata at this time for the purpose
11 that they seem to propose to introduce it.

12 I would also, having heard Ms. Holmes
13 ask for the opportunity to do a two-minute summary
14 of Ms. Bond's direct testimony, that that's
15 something that we certainly are not prepared to do
16 with our water testimony, or any of our testimony.

17 We took your instructions literally and
18 wouldn't believe that it's necessary for Ms. Bond
19 any different than any of the other witnesses who
20 have provided direct testimony today, or will
21 provide it tomorrow.

22 MS. HOLMES: May I have an opportunity
23 to respond?

24 HEARING OFFICER BOUILLON: Would you
25 like to respond to that?

1 MS. HOLMES: I would. The applicant is
2 fully aware, as is Burney Resource Group and Mr.
3 Hathaway, of our efforts to try to resolve the
4 issues regarding the language of the conditions of
5 certification.

6 We referenced in our prefiled written
7 testimony that the details of mitigation needed to
8 be worked out. That they were not final.

9 The applicant must have acknowledged
10 this fact by signing the stipulation which
11 expressly says that we need to continue working on
12 the details of the conditions of certification.

13 Therefore, it strikes me as not a fair
14 characterization that this comes as some sort of
15 surprise to them.

16 In addition, I would note that we have
17 made a good faith effort to collaborate with all
18 of the parties to try to reach some sort of an
19 agreement on this language. We spent much of last
20 week emailing drafts back and forth, having
21 conference calls. And it was the applicant, not
22 staff, that on Friday afternoon decided to stop
23 providing us feedback on the language that we were
24 developing and trying to work on with them, as
25 well as with Burney Resource Group and Mr.

1 Hathaway.

2 As a result staff continued to develop
3 the language on its own. It presented it to
4 parties here this morning. We believe that it's
5 very important to have it in the record. We
6 believe that without this information in the
7 record there is not a sufficient basis to conclude
8 that the project will not have significant
9 impacts.

10 Given the fact that it is significant
11 information, and given the fact that the applicant
12 was well aware that we were working on this, and
13 in fact worked on it with us up until Friday, I
14 would urge the Committee to reject any opposition
15 to its introduction.

16 HEARING OFFICER BOUILLON: Given the
17 Committee's desire, and I think the applicant's
18 desire to conclude these hearings tomorrow, we're
19 going to accept the errata.

20 What we're going to do is we're going to
21 continue with the direct and cross-examination.
22 And I agree with the applicant, or the Committee
23 agrees with the applicant that no summary is
24 needed.

25 I think we're all aware that water is a

1 prime issue in this case. And I think the
2 direction of cross-examination will serve to point
3 that out.

4 However, it's my understanding that none
5 of this errata pertains to Dr. Rose's testimony.
6 We will proceed with cross-examination of all
7 three witnesses as appropriate. We will require
8 the staff witnesses and Ms. -- well, I guess Ms.
9 Bond is also a staff witness -- to return to
10 tomorrow if the applicant feels -- either the
11 applicant or Burney Resource Group feels the need
12 of additional cross-examination based upon the
13 errata.

14 I realize that since it's dated December
15 18th, you could not have had sufficient
16 opportunity to discuss it with your experts.

17 I don't believe I was a party to all of
18 the various emails that went back and forth within
19 the last week or so, but I do know that there were
20 extensive emails, parties were trying to work out
21 a stipulation.

22 Apparently a more extensive stipulation
23 than what you have reached has failed to be
24 fruitful. And we are in somewhat of an
25 adversarial situation between the staff and the

1 applicant on those issues. And we may be in a
2 three-cornered process here, I don't know.

3 But at any rate we will give both the
4 Burney Resource Group and the applicant overnight
5 to look at the errata and develop any additional
6 cross-examination they may have for Mr. Sapudar
7 and Ms. Bond. Therefore we require them to spend
8 the night.

9 Unless this is completely a creation of
10 Ms. Bond, and Mr. Sapudar does not need to return.
11 But I will have to leave that. Maybe we can ask
12 Ms. Bond -- maybe we could ask Mr. Sapudar whether
13 he had anything to do with this, and maybe he can
14 leave. We'll see. We'll see how the testimony
15 develops on that.

16 (Laughter.)

17 MR. TURNER: Here comes an admission
18 against interest.

19 (Laughter.)

20 HEARING OFFICER BOUILLON: Anybody want
21 to say "not me"?

22 So let's proceed on that basis. And you
23 can skip your brief synopsis.

24 MS. HOLMES: Thank you, that's fine. I
25 would like to ask Dr. Rose two questions on

1 direct. When we had entered into the stipulation
2 with the applicant on December 7th that had
3 indicated that it was our mutual understanding
4 that parties would be going -- were going to
5 cross-examination of each other's witnesses,
6 however Three Mountain informed me today that they
7 do plan to conduct some cross-examination --

8 MR. TURNER: No, that's --

9 MS. HOLMES: -- of Dr. Rose.

10 MR. TURNER: -- that's not true. I told
11 you we are not conducting cross-examination of Dr.
12 Rose.

13 MS. HOLMES: If there are no questions
14 of Dr. Rose, then I will not ask the two questions
15 on direct.

16 MR. TURNER: The only cross-examination
17 I might have of any of these witnesses, Mr.
18 Bouillon, is if there's something that Burney
19 Resource Group brings up that I think requires
20 clarification. But I have no cross-examination
21 for these witnesses.

22 HEARING OFFICER BOUILLON: In other
23 words, you have some friendly cross, if needed,
24 for purposes of redirect?

25 MR. TURNER: Well, it wouldn't be any

1 different than Mr. Zischke's of the air panel, the
2 staff air panel.

3 HEARING OFFICER BOUILLON: Okay, well,
4 let's proceed.

5 MS. HOLMES: In that case --

6 MR. TURNER: I'm sorry, before Ms.
7 Holmes proceeds, let me just clarify from the
8 applicant's standpoint, that it's, from our view,
9 not a fair characterization that the staff and the
10 applicant are at an adversarial loggerhead over --

11 HEARING OFFICER BOUILLON: That was my
12 characterization.

13 MR. TURNER: Yes. -- over these
14 conditions. We think we're very close, quite
15 frankly. We're just not there, and for the staff
16 to take the position that it needed to offer, as
17 staff final testimony, at this late date, this
18 document generated at 7:58 this morning, we
19 thought was inappropriate.

20 But it's not fair and I don't want you
21 to leave here tonight thinking that we are miles
22 apart on this, because I don't believe we are.

23 HEARING OFFICER BOUILLON: That would be
24 developed through your experts tomorrow.

25 Ms. Holmes, --

1 MS. HOLMES: Thank you.

2 HEARING OFFICER BOUILLON: -- maybe now
3 you can proceed.

4 MS. HOLMES: With that I'd like to ask
5 Ms. Bond whether or not she has reviewed what's
6 been referred to as the Hat Creek EIR.

7 MS. BOND: Yes, I have.

8 MS. HOLMES: Specifically with respect
9 to potential water use or water impacts of that
10 project?

11 MS. BOND: That's correct.

12 MS. HOLMES: And did your review change
13 the conclusions that are contained in your
14 testimony?

15 MS. BOND: No, it did not.

16 MS. HOLMES: Can you please briefly
17 explain why not?

18 MS. BOND: Yes. Essentially my
19 evaluation of the addition of the Hat Creek
20 project to existing and ongoing cumulative impacts
21 of human uses of water in the basin have already
22 been considered in my analysis.

23 It does not substantially change,
24 significantly change my conclusions regarding the
25 additional impacts or the additional effect of

1 water use by the applicant's project.

2 In my testimony I state that there are
3 significant or substantial decreases in water
4 supply in Burney basin due to human uses of water.
5 The Hat Creek project is simply another addition
6 to that. It doesn't change the project's addition
7 to cumulative impacts.

8 MS. HOLMES: Thank you. Before I make
9 the witnesses available for cross-examination I
10 have one other housekeeping matter, and that's to
11 request that the declaration of J. Phyllis Fox be
12 marked and hopefully moved into evidence.

13 HEARING OFFICER BOUILLON: That will be
14 marked as exhibit number 81. Does anyone have any
15 objection to admitting it as evidence?

16 Ms. Crockett?

17 MS. CROCKETT: No.

18 MR. TURNER: No, sir.

19 HEARING OFFICER BOUILLON: It will be
20 admitted. Ms. Holmes.

21 MS. HOLMES: With that matter cleared
22 up, the witnesses are available for cross-
23 examination.

24 HEARING OFFICER BOUILLON: Ms. Crockett,
25 would you like to begin the cross-examination?

1 MS. CROCKETT: Thank you. Did you want
2 a comment from the Burney Resource Group on the
3 errata? Did you want any input?

4 HEARING OFFICER BOUILLON: Are you
5 talking about these conditions?

6 MS. CROCKETT: The conditions. Are we
7 going to cross the panel tomorrow on the errata,
8 or do you want any comment? This is not --

9 HEARING OFFICER BOUILLON: On this
10 errata, which is exhibit number 80, --

11 MS. CROCKETT: Right.

12 HEARING OFFICER BOUILLON: -- you can be
13 prepared to cross-examine on that tomorrow
14 morning, all right? I'm not going to require you
15 to try and read that during the hearing and ask
16 questions at the same time.

17 MS. CROCKETT: Okay, thank you.

18 CROSS-EXAMINATION

19 BY MS. CROCKETT:

20 Q This question will be directed to Dr.
21 Rose. Dr. Rose, on hopefully page 3 of your
22 testimony -- let me verify this --

23 MS. CROCKETT: Excuse me, rather than
24 his testimony, on the May 23rd letter submitted to
25 LDBond and Associates, -- are we allowed to

1 discuss that, or just the submitted evidence?

2 MS. HOLMES: I believe that's one of the
3 applicant's exhibits, attachments to their water
4 testimony.

5 MR. TURNER: I believe Ms. Holmes is
6 correct. I think she's referring to what is
7 listed as exhibit 9 in the direct water resources
8 testimony of the applicant. It's something we've
9 entitled, a comment on isotope mass balance models
10 for determining the origin of Burney Falls
11 groundwater discharge, memorandum from Dr. Rose to
12 Ms. Bond, dated May 23, 2000. Exhibit 9.

13 MS. CROCKETT: Thank you.

14 BY MS. CROCKETT:

15 Q On page 3 of that letter, Dr. Rose, do
16 you feel that your statement in that paragraph
17 still stands?

18 DR. ROSE: What paragraph do you refer
19 to?

20 MS. CROCKETT: The last paragraph, page
21 3.

22 MR. TURNER: Which paragraph?

23 MS. CROCKETT: The last paragraph.

24 DR. ROSE: Last paragraph.

25 (Pause.)

1 DR. ROSE: There were data that became
2 available subsequent to the development of this
3 document that were measured by Phyllis Fox. And
4 it changed some of our perceptions about how the
5 system works.

6 The basic conclusion, though, that I
7 defend that I believe that there's water from the
8 Hat Creek basin entering into the Burney basin
9 still stands. I still support that conclusion, if
10 that's specifically what you're looking for in
11 this --

12 MS. CROCKETT: That is specifically what
13 I'm looking for. My next question would be that
14 the data that was submitted by Dr. Fox, I think in
15 the Burney Resource Group's draft intervenor's,
16 the draft water study, that the joint intervenors
17 submitted, does it still support your conclusions
18 of the percentages of contributions from both
19 aquifers to the Falls, generally speaking? The
20 percentage --

21 DR. ROSE: It would be necessary to do a
22 more careful mass balance than was represented in
23 this report on the basis of the new data.

24 MS. CROCKETT: Thank you. That is my
25 questions for Dr. Rose.

1 HEARING OFFICER BOUILLON: How about the
2 other witnesses?

3 MS. CROCKETT: I think I'll save my
4 questions for the staff tomorrow. Or is it only
5 going to be on the errata?

6 HEARING OFFICER BOUILLON: It's only
7 going to be on the errata.

8 MS. CROCKETT: Okay. Then we'll go to
9 page 79 of the testimony. Excuse me, it will be
10 78.

11 Under impact assessment of water use,
12 fourth paragraph, I would draw staff's attention
13 to the middle of that where it starts with
14 drawdown. The sentence starts with drawdown which
15 would affect both water --

16 HEARING OFFICER BOUILLON: Three
17 sentences in a row start with drawdown.

18 (Laughter.)

19 MS. CROCKETT: Oh, I'm sorry. I didn't
20 notice that.

21 HEARING OFFICER BOUILLON: Give us one
22 more word.

23 MS. CROCKETT: Okay, --

24 HEARING OFFICER BOUILLON: Or a comma.

25 MS. CROCKETT: -- second word which, it

1 is the second sentence up from the bottom.

2 Is it staff's opinion currently that the
3 draft errata under soil and water conditions will
4 address this potential impacts?

5 Specifically the regional springs.

6 MS. BOND: Um-hum. What staff
7 concluded, oh, okay. My statement here is that
8 drawdown which would affect both water supply
9 wells and regional springs can represent
10 significant adverse impacts under certain
11 circumstances.

12 As far as regional springs go, we
13 concluded that significant adverse impacts due to
14 the reduction in water, due to drawdown, would not
15 cause significant adverse impacts.

16 The reason for this is that in terms of
17 water impacts, soil and water testimony only
18 addresses impacts to the public's use or human use
19 of water.

20 In some cases where either drawdown or
21 simply reductions in water supply causes a --
22 could cause or contribute to a substantial
23 decrease in flows from these springs, these would
24 only affect animals or plants.

25 And so any impacts caused by the

1 reduction in flow to springs is covered in the
2 biological assessment.

3 MS. CROCKETT: Okay. Thank you.
4 Basically I think the Burney Resource Group is
5 very comfortable with staff's assessment of soils
6 and waters, and we're done on our cross.

7 HEARING OFFICER BOUILLON: I would
8 assume, therefore, you have no questions?

9 MR. TURNER: No questions.

10 MS. HOLMES: No redirect.

11 PRESIDING MEMBER KEESE: All right.
12 Well, we've made a start on water. We have water
13 and biological tomorrow. We recognize those are
14 the two most difficult areas we're going to deal
15 with.

16 We will start at 9:00, and hopefully
17 finish as promptly as we can.

18 MS. HOLMES: Before we go off the --

19 PRESIDING MEMBER KEESE: I would like to
20 specifically thank the people from Burney who have
21 met us, maybe not halfway, but over here in
22 Redding. It's turned out to be quite advantageous
23 to staff and the Committee to make this
24 arrangement. We really appreciate your
25 indulgence.

1 HEARING OFFICER BOUILLON: Before we
2 leave today, I would like to find out if we should
3 enter the testimony of Dr. Rose.

4 MS. HOLMES: Well, I was hoping that we
5 could enter both Dr. Rose's testimony and Ms. Bond
6 and Mr. Sapudar's testimony that were contained in
7 exhibit 65. I understand that with respect to the
8 errata you don't want that entered now. But I
9 would move that all of the water resources portion
10 of exhibit 65 be entered.

11 HEARING OFFICER BOUILLON: Any
12 objection? Not including the errata.

13 MR. TURNER: No objection.

14 MS. CROCKETT: No objection.

15 HEARING OFFICER BOUILLON: That will be
16 admitted.

17 MR. TURNER: With respect to the errata
18 and the need for Mr. Sapudar to be here tomorrow,
19 can we give him some clarification? Or is that up
20 to him?

21 HEARING OFFICER BOUILLON: I offered him
22 an out and he did not testify he had nothing to do
23 with it, so I think he stays.

24 MR. TURNER: All right.

25 MS. HOLMES: I believe that there is one

1 minor correction in the errata that is Mr.
2 Sapudar's correction, so it would probably be best
3 to leave him here. To soil and water-4.

4 MR. TURNER: In terms of then the
5 appearance of Ms. Bond and Mr. Sapudar tomorrow,
6 to the extent that we might have any cross-
7 examination for them on the errata, and I'm not
8 sure we will, because we will continue to work
9 with staff between now and tomorrow morning to see
10 if we can't finally narrow what remaining
11 differences there are, but just so the Committee
12 is aware. The only concerns we have with those
13 errata are conditions 8 through 12.

14 The others, as you'll hear from Mr.
15 McFadden tomorrow, are fully acceptable to us.

16 HEARING OFFICER BOUILLON: All right.
17 Well, I don't know what the Burney Resource
18 Group's position is going to be --

19 PRESIDING MEMBER KEESE: Yeah, I don't
20 think we can prejudice the Burney group here,
21 so --

22 HEARING OFFICER BOUILLON: I'm sure they
23 probably haven't even seen this exhibit yet,
24 and --

25 MS. CROCKETT: Actually we could make a

1 comment on the errata.

2 HEARING OFFICER BOUILLON: Well, --

3 PRESIDING MEMBER KEESE: We just heard a
4 suggestion that only items 8 through 12 are they
5 concerned, conditions 8 to 12.

6 MR. TURNER: It's actually 13 on this
7 document.

8 PRESIDING MEMBER KEESE: -- 8 to 13, is
9 that -- if you're prepared to say that -- does
10 that make a difference?

11 (Off-the-record discussion.)

12 (Laughter.)

13 MR. TURNER: Richard, you owe us one.

14 PRESIDING MEMBER KEESE: That's known as
15 a softball. Is the Burney group agreeing, is
16 that --

17 MS. CROCKETT: I'm conferring with Mr.
18 Hathaway on that right now.

19 PRESIDING MEMBER KEESE: Sure.

20 MS. CROCKETT: Unfortunately, we would
21 prefer to go through all of the errata.

22 PRESIDING MEMBER KEESE: That's fine.

23 Okay, anything else?

24 Adjourned. We'll see you at 9:00 a.m.

25 Thank you.

1 (Whereupon, at 5:32 p.m., the hearing
2 was adjourned, to reconvene at 9:00
3 a.m., Tuesday, December 19, 2000, at
4 this same location.)

5 --o0o--
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

I, VALORIE PHILLIPS, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Hearing; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said Hearing, nor in any way interested in the outcome of said Hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 28th day of December, 2000.

VALORIE PHILLIPS

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345